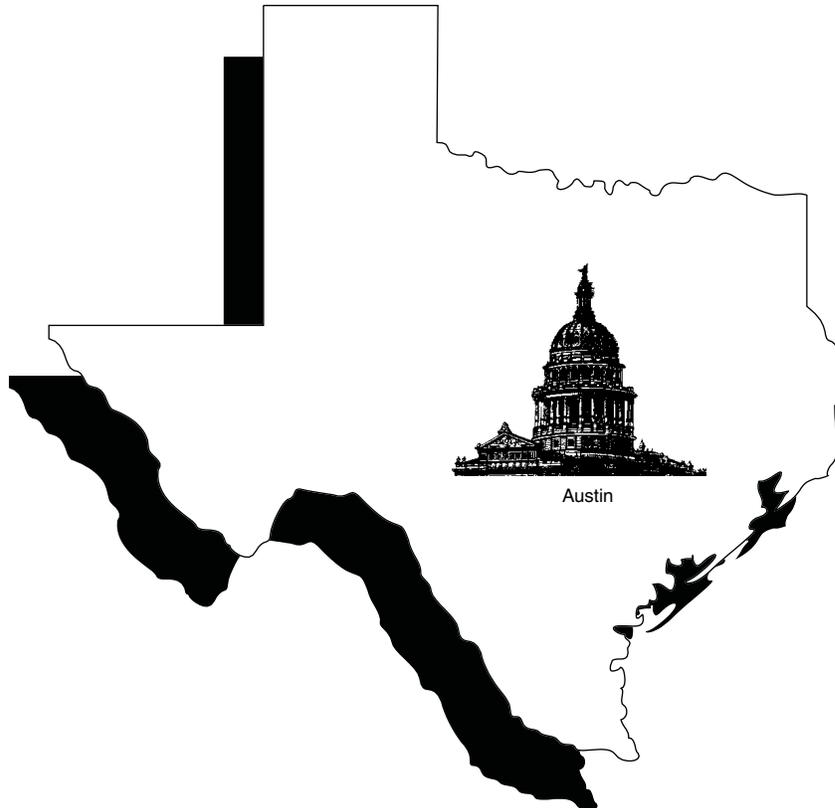


Sunset Advisory Commission



State Commission on Judicial Conduct



Staff Report

2000

SUNSET ADVISORY COMMISSION

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them. This report is the Commission staff's recommendations, which serves as the starting point for the Commission's deliberations.

STATE COMMISSION ON JUDICIAL CONDUCT

SUNSET STAFF REPORT

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SUMMARY

Summary

Overview

The Sunset staff review of the State Commission on Judicial Conduct concluded that the agency has recently made significant improvements, but additional changes would help the agency better serve the public and judges. Recent changes include reducing case backlog and the amount of time to dispose of complaints, increasing communication with people who file complaints and judges, and better publicizing Commission actions. The recommendations in this report would:

- require the Commission to better inform the public about its activities and the process for filing a complaint;
- enable complainants to more meaningfully participate in the complaint process, without fear of retaliation;
- create greater awareness of sanctions, to better prevent and deter judicial misconduct; and
- codify some of the Commission's recent improvements to ensure the agency continues in a positive direction.

A summary of the key recommendations and findings for each of the issues identified in this report is outlined below. This report does not address continuation of the agency because the Commission is subject to review, not abolishment, under the Texas Sunset Act.

Issues / Recommendations

Issue 1 The Commission's Effectiveness is Limited by Failing to More Broadly Inform the Public of the Commission's Role in Overseeing and Sanctioning Judicial Conduct.

Key Recommendations

- Require the Commission to provide easily available, plain-language information to the public and judges on what constitutes judicial misconduct, and how to file a complaint.
- Require the Commission to provide complainants with an explanation of complaint dismissals.
- Require a periodic publishing of judicial misconduct sanctions in the *Texas Bar Journal*.

Key Findings

- The absence of clear, understandable information contributes to a lack of awareness and confusion about the process for filing a complaint about a judge.
- Insufficient explanation of complaint dismissals causes the public to feel ignored or disregarded.
- Inadequate publication of sanctions can also contribute to public mistrust in the system.

- Lack of publicity on standards of conduct and sanctions imposed for violations reduces the potential for deterring other judges from similar behavior.

Issue 2 People Who File A Complaint Against a Judge Are Not Guaranteed Confidentiality, Cannot Appear Before the Commission, and Lack a Formal Right to Have A Complaint Reconsidered.

Key Recommendations

- Ensure that people who bring complaints against judges have the right to remain confidential.
- Allow the Commission to invite complainants to appear at informal proceedings.
- Codify a complainant's right to request reconsideration of a dismissed complaint.

Key Findings

- While the law protects the confidentiality of judges, it does not ensure the confidentiality of a person who files a complaint against a judge.
- The Commission may ask a judge to appear before it in an informal hearing, but may not ask the person who filed the complaint to attend.
- Unlike judges, people who file complaints do not have a formal right to have their complaints reconsidered.

Issue 3 Certain Confidentiality Restrictions Impede the Commission's Ability to Effectively Oversee Judicial Conduct.

Key Recommendations

- Require that formal hearings to discipline or remove a judge become public when the Commission files formal charges to institute the proceedings.
- Clarify that orders to suspend a judge under criminal indictment shall be public at the time they are issued.
- Allow the Commission to share information with certain law enforcement, public officials who appoint judges to the bench, courts, and schools that provide Commission-ordered education, as necessary to protect the public interest.
- Allow the Commission to obtain the criminal history of a judge under investigation, and of a complainant or witness in any Commission investigation.

Key Findings

- By law, most of the information involved in the investigation and sanctioning of judicial conduct is strictly confidential.

- While the statute says formal hearings to remove or discipline a judge are open to the public, the proceedings are essentially closed because they do not become public until the hearing actually begins.
- While the Commission has the authority to suspend a judge indicted for a crime, information on suspensions is not made available to the public.
- The statute prohibits the Commission from sharing vital information about judges with certain law enforcement, public officials, the courts, and certain schools, as needed to protect the public.
- Unlike the State Bar, the Commission cannot obtain criminal histories of complainants, judges, or other witnesses material to an investigation of judicial misconduct.

Issue 4 By Not Routinely Providing Feedback to Judicial Schools, the Commission is Missing an Opportunity to Help Prevent Common Types of Misconduct.

Key Recommendation

- The Commission should routinely provide the judicial schools with information to help ensure that training addresses common problems resulting in sanctions and orders of additional education.

Key Findings

- Judges are required to obtain initial and ongoing training on their basic duties and responsibilities.
- Many common types of misconduct can be addressed through training, but the Commission does not have a regular means to give judicial schools feedback on those common areas.

Issue 5 The Inability of Staff to Dismiss Certain Cases Without Commission Approval Wastes Valuable and Limited Resources.

Key Recommendation

- The Commission should adopt a policy to allow staff to administratively dismiss certain cases without Commission member approval.

Key Findings

- The lengthy process of taking even clearly baseless complaints to the full Commission burdens staff, Commission members, and complainants.
- Other state agencies have procedures that allow staff to dismiss complaints.

Fiscal Implication Summary

The recommendations in this report will not result in a fiscal impact to the State.

ISSUES / RECOMMENDATIONS

Issue 1

The Commission's Effectiveness is Limited by Failing to More Broadly Inform the Public of the Commission's Role in Overseeing and Sanctioning Judicial Conduct.

Summary

Key Recommendations

- Require the Commission to provide easily available, plain-language information to the public and judges on what constitutes judicial misconduct, and how to file a complaint.
- Require the Commission to provide complainants with an explanation of complaint dismissals.
- Require a periodic publishing of judicial misconduct sanctions in the *Texas Bar Journal*.

Key Findings

- The absence of clear, understandable information contributes to a lack of awareness and confusion about the process for filing a complaint about a judge.
- Insufficient explanation of complaint dismissals causes the public to feel ignored or disregarded.
- Inadequate publication of sanctions can also contribute to public mistrust in the system.
- Lack of publicity on standards of conduct and sanctions imposed for violations reduces the potential for deterring other judges from similar behavior.

Conclusion

The limited publication of information about the Commission and its activities can make it hard for people to know how to file a complaint and can fail to assure the public that judges who act inappropriately will be sanctioned. The Sunset review evaluated how well the public understands and has confidence in the Commission. The review also evaluated how accessible information on sanctions was to both the public and judges. While the agency is to be commended for many recent changes to address these concerns, Sunset staff identified actions that would help the Commission better educate the public to dispel misperceptions and alleviate mistrust in the system, and better deter judicial misconduct.

Support

Current Situation: Commission staff have begun taking steps to increase public awareness, but the Commission is not required to publish or provide information about its complaint process or outcomes to the public.

- Public trust in the judicial system depends on judges' awareness of and willingness to uphold a code of conduct, and a system that provides an open and responsive forum for complainants. To that end, the Texas Constitution established the Commission to help maintain the integrity and credibility of the judicial system by disciplining or censuring judges for incompetence, willful violation of the Code of Judicial Conduct, or conduct that casts public discredit upon the Judiciary.¹
- The Commission's statute does not mandate that information about its activities and complaint process be made available to the public. The Commission has recently adopted the approach that better publicizing activities can have a positive effect on the Texas judicial system, and is beginning to take steps to improve contact with both the public and judges. Should staff change, continuation of these improvements is not guaranteed.

Problem: The absence of clear, understandable information contributes to a lack of awareness and confusion about the process for filing a complaint about a judge.

- Many people are unaware of the Commission's existence. The Commission does not publish or distribute materials to inform the general public of the Commission's purpose, the right to complain about alleged misconduct, or the complaint process. The Commission has yet to develop an Internet page to educate and assist citizens in understanding their rights and agency procedures.
- The Commission does not clearly and simply explain to the public what does and does not generally constitute misconduct. This can result in unrealistic expectations and misconceptions, such as the idea that the Commission can change a judge's ruling in a particular case. In these cases, the Commission cannot act because the complaint received does not involve misconduct.
- In response to a random survey conducted by Sunset staff (see Appendix C, *Results of Sunset Survey of Complainants and Judges*), many people said that information about the Commission's procedures and actions is difficult to understand or inaccessible.² For example, the Commission's complaint form refers to code citations and the canons of conduct, rather than providing simple explanations to help people not used to reading statutes or legal terminology.

Many survey respondents told Sunset that information about the Commission is difficult to understand or inaccessible.

Problem: Insufficient explanation of complaint dismissals causes the public to feel ignored or disregarded.

- The Commission’s statute does not require it to explain why cases are dismissed. Although the Commission thoroughly reviews all complaints, and current staff are developing a better way to explain dismissals, in the past, the Commission has not explained why a case against a judge was dismissed. In response to the survey conducted by Sunset staff, people who filed complaints said that they were dismissed without explanation, or felt that their complaints were dismissed without investigation. This lack of explanation leads to confusion and can contribute to a general mistrust in the system.³

Publishing sanctions educates people about the agency’s activities, and helps deter judicial misconduct.

Problem: Inadequate publication of sanctions can also contribute to public mistrust in the system.

- Citizens have almost no opportunity to see what sanctions the Commission imposes to ensure appropriate judicial conduct. Although Commission staff currently send notice of sanctions to local newspapers, publication is not guaranteed. Most complainants who responded to the Sunset survey said that they never saw information on judicial sanctions in the newspapers.⁴
- Lack of widely available information on sanctions may compromise the Commission’s ability to inform the public of what constitutes proper and improper conduct, and reassure the public that misconduct is not condoned. Publishing sanctions illustrates that the system is responsive and also helps the public to understand when filing a complaint is appropriate.

Problem: Lack of publicity on standards of conduct and sanctions imposed for violations reduces the potential for deterring other judges from similar behavior.

- Information describing what constitutes misconduct, and the possible sanctions, is not widely accessible to all judges. Currently, the only publication of examples of misconduct and sanctions against judges appears once a year in the *Texas Bar Journal*. Commission staff is beginning to send sanction announcements to the *Bar Journal* for regular publication, but not all Texas judges are lawyers, and therefore may not receive the *Bar Journal*.⁵ Some judges who responded to the Sunset survey said that they do not always see the sanctions published in the *Bar Journal*.

<p>What is Judicial Misconduct?</p> <p>Judicial misconduct is an action by a judge that brings discredit upon the Judiciary or the administration of justice. It could be a violation of the Texas Constitution, the Texas Penal Code, the Code of Judicial Conduct, or other rules promulgated by the Supreme Court of Texas.</p> <p>Examples of judicial misconduct may include:</p> <ul style="list-style-type: none"> • inappropriate or demeaning courtroom conduct such as yelling or profanity; • using a judicial office for private gain or on behalf of family or friends; • out-of-court behavior such as sexual harassment, theft, driving while intoxicated, making threats, making racist comments; or • alcohol, drug, or mental health problems.

- This lack of publicity impedes the Commission's ability to successfully deter judicial misconduct. Making sanctions public provides judges with examples of inappropriate behavior and reminds judges that the Commission punishes misconduct. The threat of publicity also serves as a deterrent, as most judges do not wish to see their names in print.

Comparison: Other states use multiple means of providing information on judicial conduct activities.

- Several states use the Internet as well as the resources of other public institutions, such as libraries, to publish the results of misconduct cases. For further information, see the chart, *How Other States Publish Complaints and Outcomes*.

How Other States Publish Complaints and Outcomes	
Agency	Type of Information Provided
Alabama Judicial Inquiry Commission	Public has access to case specifics and the outcomes on the Internet.
Arizona Commission on Judicial Conduct	Opinions are distributed to all judges and select libraries and other public institutions. The complete text of all opinions from 1976 to present is available on the Commission's website. Also annually publishes the Arizona Judicial Conduct and Ethics Bulletin. No names are listed, but the bulletin cites case details and reasons for sanctions.
Illinois Judicial Inquiry Board	Internet Web site lists names and public formal charges, as well as summaries of reported violations.
New York State Commission on Judicial Conduct	The Commission issues a press release whenever it issues a determination that a judge should be admonished, censured, or removed from office. The entire record of the proceeding is available for inspection by appointment. The Commission's 1997-2000 public determinations are available on the Internet.
Washington Judicial Conduct Commission	Names and all details of case proceedings are published on the Internet.

Recommendation

Change in Statute

1.1 Require the Commission to provide easily available, plain-language information to the public and judges on what constitutes judicial misconduct, and how to file a complaint.

This recommendation would require the Commission to develop plain-language materials describing the complaint process and the types of sanctions issued by the Commission. The Commission should develop a standard packet, including these materials, to distribute to people who file complaints. The Commission should provide information in both English and Spanish.

The Commission should also adopt a policy to better disseminate this information in the courts and to the Judiciary. For example, a brochure explaining Commission responsibilities and unacceptable judicial behavior could be placed in every courthouse, distributed as part of standard court documents given to all those involved in a case within the judicial system, or distributed by lawyers to their clients. In addition, the Commission should consider publishing information in the newsletters of judicial education schools, or using electronic mail to inform judges. This recommendation would allow the Commission to determine the most appropriate method for distributing the printed information before full implementation.

The Commission should also make this information easily available to the general public. The Commission is currently exploring development of a Web site with the Office of Court Administration. A more informative Web site would allow individuals from across the state to obtain information about the Commission and its complaint process, as well as allow judges another option for understanding potential misconduct and the resulting sanctions.

Plain-language materials and the Web site should include:

- a basic description of the Commission's responsibilities including, what it can and can not do;
- descriptions of unacceptable behaviors and each type of consequence, including orders of additional education; and
- a basic flowchart depicting the steps in the complaint process.

The Web site should also include:

- copies of complaint forms;
- the full text of the Commission's annual report; and
- summaries of all sanctions and orders of additional education. The names of judges receiving public sanctions would appear in all materials. In cases of private sanctions, summaries would include a discussion of the misconduct and resulting sanctions, without names and other identifying information.

1.2 Require the Commission to provide complainants with an explanation of complaint dismissals.

This recommendation would require the Commission to give specific reasons explaining why a case has been dismissed, rather than simply notifying a complainant of the dismissal. A fuller explanation would help to alleviate any potential mistrust that may develop when complainants are dismissed outright.

1.3 Require a periodic publishing of judicial misconduct sanctions in the *Texas Bar Journal*.

More frequent publication of sanctions would provide more timely notice of Commission actions and give judges more opportunities to see sanctions. The *Bar Journal* would no longer publish the Commission's entire annual report.

Impact

Developing more easily understood information and making it more accessible to both the public and judges will help the Commission to better maintain public confidence in the judicial system and deter judicial misconduct. Better information increases public awareness of Commission activities, and sends the message that Texas does not tolerate judicial misconduct.

Creating a substantive Web site will increase the opportunities for the public and judges to see the results of the Commission's complaint process. Ensuring the publication of sanctions on the Web site serves as a deterrent to judges by promising public admonition and making them aware of unacceptable behavior. The annual report would be made available on the Web site along with full, user-friendly explanations of the different types of sanctions, behaviors considered to be misconduct, annual statistics on the numbers of filed cases, and complaint dispositions. Publishing the Commission's annual report on the Internet will eliminate the need to publish the report in the *Bar Journal*.

Fiscal Implication

This recommendation may have a fiscal impact to the State. Currently, the Commission is working with the Office of Court Administration (OCA) to create a new Web site on OCA's server, which should provide the Web site needed to implement these recommendations. Additional costs may also result, but were not estimated for this report.

¹ Texas Constitution, art. V, sec. 1-a, subsection (6)a.

² Sunset Staff, Survey of judges, complainants, and other parties who have been involved with the State Commission on Judicial Conduct, June-July 2000.

³ Ibid.

⁴ Ibid.

⁵ Of the 2,313 justices of the peace, and county and municipal judges in Texas, fewer than 726 are attorneys. State Commission on Judicial Conduct, *Annual Report* (Austin, Tex., 1999), p. 19.

Issue 2

People Who File A Complaint Against a Judge Are Not Guaranteed Confidentiality, Cannot Appear Before the Commission, and Lack a Formal Right to Have A Complaint Reconsidered.

Summary

Key Recommendations

- Ensure that people who bring complaints against judges have the right to remain confidential.
- Allow the Commission to invite complainants to appear at informal proceedings.
- Codify a complainant's right to request reconsideration of a dismissed complaint.

Key Findings

- While the law protects the confidentiality of judges, it does not ensure the confidentiality of a person who files a complaint against a judge.
- The Commission may ask a judge to appear before it in an informal hearing, but may not ask the person who filed the complaint to attend.
- Unlike judges, people who file complaints do not have a formal right to have their complaints reconsidered.

Conclusion

A person who files a complaint against a judge does not have many of the statutory rights granted to judges. Sunset staff identified ways to place the complainants on a more equal ground with judges. These recommendations would help to reduce the fear of retaliation for people who file complaints against judges, and provide the public with meaningful and equal opportunities to participate in the complaint resolution process. Finally, these recommendations would better enable the Commission to make important decisions affecting both the public and the Judiciary.

Support

Mission Statement

To preserve the integrity of all judges in the state, to ensure public confidence in the Judiciary, and to encourage judges to maintain high standards of both professional and personal conduct.

Current Situation: To ensure public confidence in the Judiciary, the Commission must provide a fair process that balances the rights of both judges and complainants.

- The Commission's mission, shown in the text box, *Mission Statement*, imposes a duty on the agency to meet the needs of both judges and the public.
- In addition, the Texas Constitution requires the Commission to stay as fully informed as possible about circumstances relating to the misconduct or disability of judges. To ensure that Commission members receive enough relevant information about judges to guide their decisions, the agency must provide an open and responsive atmosphere that encourages the public to bring valid complaints.

Problem: While the law protects the confidentiality of judges, it does not ensure the confidentiality of a person who files a complaint against a judge.

- People who file complaints may wish to remain anonymous for fear of retaliation by a judge. Many complainants have cases pending before a judge, or work for a judge, and fear they may lose their case or their job.
- As a matter of practice, the Commission accepts complaints from people who wish to remain anonymous, and protects the identity of complainants who request confidentiality. The Commission's statute grants discretion to the Commission, stating that the Commission may refuse to release the identity of a complainant. However, the statute does not specifically guarantee a complainant the right to remain anonymous or request confidentiality.

Problem: The Commission may ask a judge to appear before it in an informal hearing, but may not ask the person who filed the complaint to attend.

- The Commission makes decisions on all cases in informal proceedings that are closed to the public and complainants. While judges do not have the right to appear before the Commission at informal proceedings, the Commission may request a judge's appearance. If asked to appear, judges present their viewpoint and answer questions from staff and Commission members, and may also elect to open the proceeding to the public or to anyone else.
- As part of a random survey conducted by Sunset staff, many complainants reported that they did not think the Commission fully

Many people who had filed a complaint against a judge told Sunset staff they felt left out of the agency's complaint process.

considered their complaints, and felt left out of the process.¹ While the agency has recently made improvements (see the text box, *Recent Improvements*), additional changes would make the process more responsive to the public.

By inviting judges, but not complainants, to attend informal hearings, the Commission may appear to not value the complainant's view in equal measure to that of the judge's. This situation may discourage members of the public from filing valid complaints, and could undermine public confidence in the judicial system.

- In addition, when the Commission solicits testimony only from a judge, members must vote on matters of public concern without hearing input from both sides. Although staff acts neutrally and tries to provide all necessary information about a case, testimony from complainants would help Commission members make a more informed decision.

Problem: Unlike judges, people who file complaints do not have a formal right to have their complaints reconsidered.

- The Commission's enabling statute allows judges to appeal a public or private sanction or an order of education. A judge may request that the Texas Supreme Court appoint a special court of three appellate judges to hold a trial and consider the case from the beginning, as if the Commission had taken no previous action. This special court may dismiss the case, affirm the Commission's decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings. As of June 2000, four judges had filed appeals during fiscal year 2000.
- In December 1999, the Commission adopted an internal policy to reconsider dismissals, but people who file complaints have no statutory right to this reconsideration. If the complainant has new evidence of misconduct, the new policy offers one chance to ask the Commission to reconsider a complaint. If the Commission grants the request, staff opens a new investigation. As of June 2000, the agency had received 90 requests for reconsideration. Of the requests filed on time and that presented new evidence, the Commission has reconsidered 15, granted three, denied 12, and 33 are pending.

Recent Improvements

In the past year, the agency has made a number of changes, including:

- A toll-free telephone number that allows judges, complainants, and the public to ask questions or discuss complaints;
- Informal policies to notify complainants of case status and reasons for dismissal; and
- An internal policy allowing complainants to request reconsideration of dismissed complaints.

Recommendation

Change in Statute

2.1 Ensure that people who bring complaints against judges have the right to remain confidential.

This recommendation would protect complainants who fear reprisal from the judge who they complained against, and encourage the public to bring cases without fear of retaliation. Like a judge, the complainant would also have the right to waive his or her own confidentiality. The Commission should explain to complainants that confidentiality does have limits, though, such as when a judge receives a public sanction and the entire complaint file becomes public.

2.2 Allow the Commission to invite complainants to appear at informal proceedings.

This recommendation would grant the Commission discretion to invite complainants to its informal hearings, providing complainants with the same access to the Commission that judges have. Commission members would also benefit by having the opportunity to hear more information about a case before making important decisions. The Commission should adopt rules outlining a procedure to hear from both judges and complainants without compromising confidentiality.

2.3 Codify a complainant's right to request reconsideration of a dismissed complaint.

This recommendation would place in law the Commission's newly-adopted policy. Like the policy, complainants should have one chance for reconsideration if the complainant provides additional evidence of misconduct within 30 days of receiving the notice of dismissal. The Commission should also ensure that a reconsidered case receives a full investigation, performed by staff who did not previously review the matter.

Impact

The intent of these recommendations is to help to reduce the fear of retaliation people feel when filing complaints, provide the public with meaningful and equal opportunities to participate in the complaint resolution process, and better equip the Commission to make important decisions that affect the public and the Judiciary.

Fiscal Implication

This recommendation will not result in a fiscal impact to the State.

¹ Sunset Staff, Survey of judges, complainants, and other parties who have been involved with State Commission on Judicial Conduct cases, June-July 2000.

Issue 3

Certain Confidentiality Restrictions Impede the Commission's Ability to Effectively Oversee Judicial Conduct.

Summary

Key Recommendations

- Require that formal hearings to discipline or remove a judge become public when the Commission files formal charges to institute the proceedings.
- Clarify that orders to suspend a judge under criminal indictment shall be public at the time they are issued.
- Allow the Commission to share information with certain law enforcement, public officials who appoint judges to the bench, courts, and schools that provide Commission-ordered education, as necessary to protect the public interest.
- Allow the Commission to obtain the criminal history of a judge under investigation, and of a complainant or witness in any Commission investigation.

Key Findings

- By law, most of the information involved in the investigation and sanctioning of judicial conduct is strictly confidential.
- While the statute says formal hearings to remove or discipline a judge are open to the public, the proceedings are essentially closed because they do not become public until the hearing actually begins.
- While the Commission has the authority to suspend a judge indicted for a crime, information on suspensions is not made available to the public.
- The statute prohibits the Commission from sharing vital information about judges with certain law enforcement, public officials, the courts, and certain schools, as needed to protect the public.
- Unlike the State Bar, the Commission cannot obtain criminal histories of complainants, judges, or other witnesses material to an investigation of judicial misconduct.

Conclusion

Some of the Commission's confidentiality requirements inappropriately keep certain information from the public and may impede the Commission from effectively investigating judicial conduct. Sunset staff examined these requirements, balancing the need for confidentiality and the public's right to know and participate in the process. These recommendations would help open the process to the public and allow the Commission to share information with other agencies and parties, as needed to protect the public interest.

Support

As part of the judiciary, the Commission is not subject to the Public Information Act.

Current Situation: By law, most of the information involved in the investigation and sanctioning of judicial conduct is strictly confidential.

- As part of the Judiciary, the State Commission on Judicial Conduct is not subject to the Texas Public Information Act. Under the Texas Constitution and the Commission's enabling statute, papers filed with the Commission and Commission proceedings are generally confidential. The text box, *Exceptions to Confidentiality*, provides detail on what information the Commission may release.
- Confidentiality requirements protect a judge from being tried by the media or in the community before the judge may present his or her side of the case. Confidentiality helps to protect a judge's reputation from allegations that may prove to be baseless, and that could undermine public confidence in the judicial system. Confidentiality also helps prevent unscrupulous complainants from engaging in a campaign of harassment that may overburden the Commission, threaten to intimidate judges, and detract from the State's ability to attract qualified judges.

Exceptions to Confidentiality

Public information includes:

- public sanctions and materials considered by the Commission that result in public sanctions;
- all pleadings and evidence in formal proceedings, once the proceeding has begun; and
- any appeals from Commission sanctions.

In addition, the Commission may release information if:

- the issues have been made public by other sources, and the Commission determines that a public statement would serve the best interests of a judge or the public; or
- a judge files a written request for release of his or her name, nature, and disposition of a complaint filed against the judge.

Problem: While the statute says formal hearings to remove or discipline a judge are open to the public, the proceedings are essentially closed because they do not become public until the hearing actually begins.

- During closed informal hearings, the Commission decides whether to dismiss a complaint, order additional education, sanction the judge, pass for further staff investigation, or institute formal proceedings.

In open formal proceedings, the Commission may itself hold a fact-finding hearing similar to a trial, or request the Texas Supreme Court to appoint a special master. If a special master holds the trial, he or

she reports findings of fact to the Commission, which then holds a public hearing to consider the special master's report. The Commission may request additional evidence, dismiss the matter, publicly censure the judge, or recommend removal.

- A matter remains confidential until the fact-finding hearing actually begins. This does not allow for any advance notice to the public, essentially resulting in a closed hearing. This also prevents the public and the media from viewing important documents until after the hearing has convened.
- Texas is one of only two states in which confidentiality is protected until the hearing begins. In 33 states, confidentiality ends after formal charges are filed, and the charges, judge's answer, and subsequent proceedings become public.¹

Problem: While the Commission has the authority to suspend a judge indicted for a crime, information on suspensions is not made available to the public.

- The Commission may vote to suspend a judge who has been indicted for a crime. Although a judge may request a post-suspension hearing to demonstrate that continued service would not impair public confidence in the Judiciary, the Commission's statute does not make orders of suspension public. Thus, the public does not receive notice of the hearing, in which public confidence is an issue. Conversely, the public is not informed of withdrawals of suspension orders either.

In addition, other factors make incomplete information about suspensions public. Texas Supreme Court rules require that the appropriate public officials receive notification of suspensions and withdrawals, and people appearing in the judge's court will learn of the suspension or withdrawal. However, the Commission cannot release vital information to more thoroughly inform the public, such as why the judge was suspended.

Problem: The statute prohibits the Commission from sharing vital information about judges with certain law enforcement, public officials, the courts, and certain schools, as needed to protect the public.

- Although the Commission may learn during an investigation that a criminal act has been, is being, or is about to be committed, the Commission lacks statutory permission to report such information to the appropriate law enforcement authority. In contrast, attorneys may reveal confidential information when they reasonably believe revelation is necessary to prevent clients from committing a criminal or fraudulent act.² Attorneys must reveal confidential information to prevent clients from committing an act that is likely to result in death or substantial bodily harm to a person.³

By law, a formal hearing to discipline a judge does not become public until the hearing actually begins.

The Commission's statute prevents it from reporting criminal information to law enforcement authorities.

The Commission may not release a judge's disciplinary record to verify the judge's eligibility for further appointments.

- Confidentiality requirements may also prevent the Commission from ensuring that ineligible judges do not serve on the bench. To be eligible for assignment as a visiting judge, retired and former judges must certify to the presiding judge that they did not resign to avoid facing formal proceedings instituted by the Commission. However, the Commission cannot release a judge's disciplinary record to confirm the certification, unless the judge requests the Commission to do so. Similarly, if a public official wants to appoint a judge to a state or federal court, the Commission may not reveal information during the background check.
- When the Commission asks the Supreme Court to appoint a special master to preside over formal proceedings, the Commission cannot provide specific information about the particular judge or misconduct to ensure that the Supreme Court selects an appropriate and unbiased master. For example, the master selected could be either a good friend or a political rival of the judge.
- Confidentiality requirements also prevent the Commission from sharing relevant information with judicial training schools when the Commission orders education as a private sanction. To avoid conflicts with confidentiality provisions, the Commission asks the appropriate judicial training school to prepare a list of possible mentors, based only on general information about the judge's location and what type of education he or she needs. Without specific facts about the particular judge or misconduct, the judicial school's list may include mentors with whom the judge has a personal relationship or conflict, or who engaged in similar misconduct themselves.

Problem: Unlike the State Bar, the Commission cannot obtain criminal histories of judges, complainants, or other witnesses material to an investigation of judicial misconduct.

- The Commission lacks the authority to obtain the criminal history of judges, complainants, or other witnesses necessary to their investigation process. Examining the criminal history of a judge or witness could help the Commission determine if a judge had previous incidents of misconduct, and assess credibility of complainants and witnesses. However, unlike the State Bar, the Commission cannot obtain this information from the Department of Public Safety (DPS).

Recommendation

Change in Statute

3.1 Require that formal hearings to discipline or remove a judge become public when the Commission files formal charges to institute the proceedings.

This recommendation would ensure the public's awareness of these formal hearings ahead of time, instead of when the hearing begins. It would make formal hearings and all related documents public when the Commission files charges, as is the practice in 33 other states.

3.2 Clarify that orders to suspend a judge under criminal indictment shall be public at the time they are issued.

Suspension orders, withdrawals of suspension orders, and documents that are part of the suspension file would become public when they are issued. This recommendation would allow the Commission to assure the public when a judge under indictment is suspended from duty, pending the resolution of the charges. A suspension file contains information such as the criminal indictment that serves as the basis for Commission suspension orders. Indictments are otherwise public records. In addition, the public should be aware of post-suspension hearings, in which a judge must demonstrate that continued service would not impair public confidence in the Judiciary. Likewise, withdrawals of suspension orders should also be public, allowing full disclosure of the resolution of the matter.

3.3 Allow the Commission to share information with certain law enforcement, public officials who appoint judges to the bench, courts, and schools that provide Commission-ordered education, as necessary to protect the public interest.

This recommendation would enable the Commission to protect the public by reporting to the appropriate authority information reasonably suggesting that a criminal act has been, is being, or is about to be committed. It would also allow the Commission to release information verifying a judge's eligibility to serve on the bench. The Commission would also be able to share enough information with the Supreme Court and judicial schools, to match the judge with appropriate special masters and mentors.

The Commission should share only the information necessary for each entity to perform its function. For example, the Commission could release the judge's name and type of misconduct to a judicial school, but the complainant's name and other parts of the file would not be necessary for the school to name a suitable mentor. Similarly, a public official such as a presiding judge or the Governor, would receive only disciplinary information necessary to confirm a potential appointee's eligibility to serve on the bench.

3.4 Allow the Commission to obtain the criminal history of a judge under investigation, and of a complainant or witness in any Commission investigation.

The general counsel of the State Bar may receive similar information. Like the State Bar, information from DPS would remain confidential, and the Commission would be required to destroy criminal history information after a final determination is made in the case. This recommendation would aid the Commission in its investigations and its formal proceedings by allowing it to better assess the credibility of witnesses and determine the appropriate outcome for the judge.

Impact

The intent of these recommendations is to eliminate a number of restrictive provisions that impede the Commission from sharing information with the public and others regarding judges and their conduct in Texas. Providing the means for disclosure of meetings and documents will allow the public to be informed of disciplinary actions involving judges. Also, the Commission needs additional information to do its job, and needs to provide information to other agencies and parties to allow them to fulfill their responsibilities.

Fiscal Implication

These recommendations will not result in a fiscal impact to the State.

¹ American Judicature Society, *Handbook for Members of Judicial Conduct Commissions*, by Cynthia Gray (Chicago, IL, 1999), p. 11.

² Tex. Govt. Code Ann. T. 2, Subt. G App. A, Art. 10, § 9, Rule 1.05(e) (Vernon 2000).

³ Tex. Govt. Code Ann. T. 2, Subt. G App. A, Art. 10, § 9, Rule 1.05(c)(7) (Vernon 2000).

Issue 4

By Not Routinely Providing Feedback to Judicial Schools, the Commission is Missing an Opportunity to Help Prevent Common Types of Misconduct.

Summary

Key Recommendation

- The Commission should routinely provide the judicial schools with information to help ensure that training addresses common problems resulting in sanctions and orders of additional education.

Key Findings

- Judges are required to obtain initial and ongoing training on their basic duties and responsibilities.
- Many common types of misconduct can be addressed through training, but the Commission does not have a regular means to give judicial schools feedback on those common areas.

Conclusion

The Commission has no means of ensuring that judicial schools have information illustrating the numbers and types of problems that the Commission sees in complaints against judges. As a result, judges may receive incomplete information regarding acceptable professional behavior. The Sunset review evaluated the manner in which judges are educated, and whether or not judicial schools were informed about common problems and able to provide specific training on acceptable conduct. Staff identified actions to help ensure that Texas' judges receive specific conduct education, and prevent judicial misconduct.

Support

Current Situation: Judges are required to obtain initial and ongoing training on their basic duties and responsibilities.

- When judges enter office, they must obtain training from one of the judicial training schools, and complete continuing education requirements every year. The schools provide judges with reference materials to guide judges through their responsibilities. The table, *Texas Judicial Training*, provides more information on training requirements and indicates which schools educate which judges.

Problem: Many common types of misconduct can be addressed through training, but the Commission does not have a regular means to give judicial schools feedback on those problem areas.

- Legal and court procedural issues are often complex, and some judges may take judicial action that exceeds their authority or contradicts procedural rules. For example, the Commission may find that a judge who searched a crime scene and engaged in law enforcement activities acted in good faith. To address the problem, the Commission might require the judge to obtain one-on-one instruction with a mentor judge who explains that law enforcement activities are outside the authority of the Judiciary. For examples of other problems that may result in an order of additional education, please see the text box, *Orders of Additional Education*.

Orders of Additional Education

During fiscal year 1999, examples of problems for which the Commission issued orders for additional education included:

- Ex parte communication
- Impartiality
- Improper pretrial procedures

These orders address misconduct on a case-by-case basis after the misconduct has occurred. However, other judges may be taking similar actions, unaware that they are inappropriate.

- All judges receive training when appointed or elected to the bench, and most judges serve the bench in good faith. However, in 29 percent of the cases in which the Commission took action in fiscal year 1999, the judge claimed to be unaware of acceptable professional behavior. These judges received orders of additional education.²
- Individual curriculum committees of the Texas judicial schools establish judicial training requirements, based upon needs determined by surveying judges and monitoring the questions asked at training seminars. Without specific information on problems seen by the Commission, schools cannot assist the Commission in reducing these problems through targeted training.

Judges often claim to be unaware of acceptable professional behavior.

Texas Judicial Training			
Type of Judge	Requirements¹	School	Number of Judges Served
Appellate	Instruction in court administration and substantive, procedural, and evidentiary laws – at least 30 hours the first year, and 16 hours each following year.	Texas Center for the Judiciary	98
District		Texas Center for the Judiciary	396
Statutory County		Texas Center for the Judiciary	197
Constitutional County		Texas Association of Counties	254
Associate Judges		Texas Center for the Judiciary	101*
Statutory Probate		Texas College of Probate Judges	N/A**
Municipal	Instruction in the performance of office duties – at least 12 hours, or at least 32 hours if not a licensed attorney, the first year, and at least 12 hours each following year.	Texas Municipal Courts Education Center	1,216
Justices of the Peace	Instruction in the performance of office duties – 4 hours the first year, and 20 hours each following year.	Texas Justice Court Training Center	843
IV-D Masters	None.	Receive training from the Office of Court Administration. In the past, have received some ethics training from Commission staff.	101*
Retired	None.	Texas Center for the Judiciary	N/A

*Total number of Associate judges and IV-D Masters is 101. Both types of judges are lawyers who serve family courts of law and are subject to judicial discipline.

**Number can not be separated from the total number of Constitutional County Judges.

Recommendation

Change in Statute _____

4.1 The Commission should routinely provide judicial schools with information to help ensure that training addresses common problems resulting in sanctions and orders of additional education.

This recommendation would help ensure that training is tailored to address actual problems that result in judicial sanctions or orders of additional education. Because schools focus on different types of judges, the Commission should provide information categorized by type of judge and misconduct. For example, if the Commission sees a large number of district court judges engaging in ex parte communication, the Texas Center for the Judiciary could modify their curriculum to address this problem. This change should make required training more meaningful to the judges, while helping the Commission to reduce complaints by averting them on the front end.

Impact _____

Providing information to the judicial schools would help them tailor training on common problems seen by the Commission and better prevent misconduct.

Fiscal Implication _____

This recommendation has no fiscal impact to the State.

¹ Rules of Judicial Education, Judicial and Court Personnel Training Program, Court of Criminal Appeals, September 1, 1999.

² State Commission on Judicial Conduct, *Annual Report*, (Austin, Tex., 1999), p. 18.

Issue 5

The Inability of Staff to Dismiss Certain Cases Without Commission Approval Wastes Valuable and Limited Resources.

Summary

Key Recommendation

- The Commission should adopt a policy to allow staff to administratively dismiss certain cases without Commission member approval.

Key Findings

- The lengthy process of taking even clearly baseless complaints to the full Commission burdens staff, Commission members, and complainants.
- Other state agencies have procedures that allow staff to dismiss complaints.

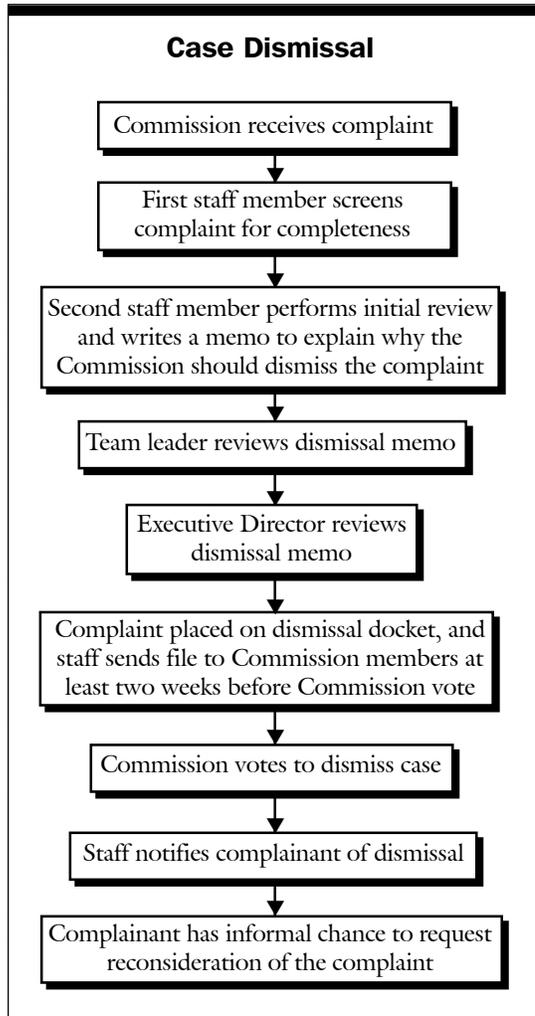
Conclusion

Although a large number of complaints are baseless or do not even allege judicial misconduct, the agency does not have a procedure that allows staff to administratively dismiss cases without Commission approval. Sunset staff found that this approach wastes valuable agency resources, and may also cause a person who files a complaint to wait an unnecessarily long time for resolution of the case. The recommendation to adopt a policy allowing administrative dismissal would save the Commission time and money, and would speed the resolution time for people who file baseless complaints. Safeguards, such as high-level staff review and the complainant's ability to request reconsideration, would ensure that each complaint receives full consideration.

Support

Current Situation: The Commission does not have a procedure allowing staff to dismiss cases without Commission member approval.

- After performing an initial review of a complaint against a judge, agency staff may decide to recommend that the Commission dismiss the complaint. For example, the complaint may not allege judicial misconduct, may involve a matter for an appellate court, or the judge may have retired. The flowchart, *Case Dismissal*, shows the steps involved in dismissing a complaint.



- The Commission’s rules state that if the preliminary investigation discloses that the allegation or appearance is unfounded or frivolous, the Commission shall terminate further proceedings. However, staff presents all cases to the Commission, because the agency does not have a procedure to administratively dismiss complaints.

Problem: The lengthy dismissal process of taking even clearly baseless complaints to the full Commission burdens staff, Commission members, and complainants.

- Even when a complaint clearly does not allege misconduct or is not within the Commission’s jurisdiction, staff performs a thorough preliminary investigation. While the staff should give each complaint

Currently, staff must investigate complaints that clearly do not allege misconduct.

due consideration, this process may take months, distracting staff from investigating valid complaints, and reducing agency productivity.

- During the five hearings held between December 1999 and June 2000, the Commission dismissed an average of almost 40 percent of the total complaints disposed, because they did not allege misconduct.¹ For example, a person may complain because a judge ruled against them in a case, which is the judge's duty, but the judge did not engage in misconduct. Reviewing the case files before the hearing and voting at the hearing take up valuable Commission time.
- Because the Commission's dismissal process to dismiss a case may take months or even longer, the person who filed the complaint may suffer harm by waiting an extremely long time to learn of the dismissal. For example, if a person's complaint concerns a matter for an appellate court or another agency, the complainant may miss an important filing deadline.

Between June 1999 and December 2000, the Commission dismissed almost 40 percent of cases considered because they did not allege misconduct.

Comparison: Other state agencies have procedures that allow staff to dismiss complaints.

- When a person believes a lawyer has committed misconduct, he or she may file a grievance with the State Bar. If the investigator determines that there is not an allegation of misconduct, the investigator classifies the matter as an "inquiry," and dismisses it. Only a grievance that alleges misconduct is classified as a complaint that results in a hearing.
- The Commission on Human Rights staff dismisses a complaint if the investigation reveals that reasonable cause does not exist to establish that the employer engaged in an unlawful employment practice. A panel of Commissioners reviews the evidence only if the Executive Director determines that reasonable cause exists.

Recommendation

Management Action

5.1 The Commission should adopt a policy to allow staff to administratively dismiss certain cases without Commission member approval.

Commission staff should have the ability to dismiss cases that do not allege misconduct, are moot because a judge has resigned or died, or concern matters for an appellate court. Commission members should feel secure in relying on staff expertise and experience to determine when cases should be dismissed. Checks and balances, such as team leader and Executive Director review, and the right to request reconsideration, would ensure that the agency does not dismiss cases deserving further action. In almost all cases, the Commission has voted to dismiss cases in accordance with the staff

recommendation. The Commission could also request to review case files and discuss them at a hearing. Finally, the person who filed the complaint can request reconsideration by the agency.

Impact

The intent of this recommendations is to enable both agency staff and Commission members to more efficiently process cases to benefit both judges and the public. This recommendation will also help to ensure that complainants meet deadlines to take action outside the Commission's purview.

Fiscal Implication

Providing for administrative dismissal should result in savings to the State by allowing staff to spend valuable time focusing on more pressing cases. The Commission would also save time at informal hearings by not having to vote on every case.

¹ The Commission did not track these numbers until December 1999.

ACROSS-THE-BOARD RECOMMENDATIONS

State Commission on Judicial Conduct	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Apply	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Do Not Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Apply	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Modify	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Do Not Apply	9. Provide for public testimony at meetings of the policymaking body.
Apply	10. Require information to be maintained on complaints.
Apply	11. Require development of an equal employment opportunity policy.

AGENCY INFORMATION

Agency Information

AGENCY AT A GLANCE

The State Commission on Judicial Conduct (the Commission) exercises jurisdiction over about 3,450 judges and judicial officers. Created by constitutional amendment in 1965, the Commission is a judicial agency whose major function is investigating and taking appropriate action in cases of judicial misconduct or incapacity of judges and judicial officers. Sanctions may include discipline, education, censure, or filing formal proceedings that could result in removal from office.

Key Facts

- **Funding.** The Commission operates with an annual budget of about \$700,000. General revenue now supports the agency's entire budget.
- **Staffing.** The Commission employs 15 people, including six attorneys, one investigator, and eight support staff.
- **Jurisdiction.** A total of 3,459 judges fall under the agency's jurisdiction and authority. This includes 98 appellate judges; 408 district judges; 197 statutory county judges; 254 constitutional county judges; 843 justices of the peace; 1,216 municipal judges; 101 associate judges, child support masters, and magistrates; and 342 retired and former judges who are available to sit as visiting judges.
- **Complaints.** In fiscal year 1999, the agency processed 856 complaints, receiving 776 complaints and carrying over 360 complaints from fiscal year 1998. The average time to process a case took 5.2 months. At the end of fiscal year 1999, 281 cases were pending.
- **Investigations.** Of the 856 complaints processed, the Commission dismissed 781. The agency dismissed 25 percent after initial review, 44 percent after preliminary investigation, and 31 percent after full investigation. In cases where staff performed full investigations, the Commission dismissed 75 percent and ordered disciplinary action in 25 percent.
- **Sanctions.** In fiscal year 1999, the agency ordered a total of 20 public sanctions: seven reprimands, two warnings, and 11 admonitions. The Commission ordered 19 private sanctions: six

Mission Statement

To preserve the integrity of all judges in the state, to ensure public confidence in the Judiciary, and to encourage judges to maintain high standards of both professional and personal conduct.

On the Internet

The Commission does not have its own Web site. Links to information such as administrative rules, budget, expenditures, and statutes are available at www.state.tx.us/agency/242.html.

reprimands, seven warnings, and six admonitions. Six of these private sanctions included orders of additional education. As of June 2000, the agency had ordered 24 public sanctions and 18 private sanctions during the current fiscal year.

MAJOR EVENTS IN AGENCY HISTORY

- 1965** Nine-member Commission on Judicial Qualifications created by constitutional amendment, making Texas the second state in the nation to create an independent commission to enforce ethical standards for judges. Jurisdiction limited to appellate and district judges.
- 1970** Constitutional amendment increased the Commission's jurisdiction to include county and county court-at-law judges, justices of the peace, municipal court judges, and judges of special courts. Commission authorized to issue private reprimands, public censures, and recommend removal or involuntary retirement.
- 1977** Constitutional amendment changed name to State Commission on Judicial Conduct. Also authorized Commission to issue public reprimands and suspend a judge from duties upon grand jury indictment for a felony or misdemeanor charge involving official misconduct.
- 1983** Legislation made formal proceedings open to the public.
- 1984** Constitutional amendment restructured Commission membership and increased size to 11 members. Increased jurisdiction to include retired judges and masters. Authorized Commission to order a private or public admonition or warning, and to require a judge to obtain additional education.
- 1987** Legislation provided for the appeal of any sanction by a judge with hearings before a special court of review, composed of three appellate judges drawn by lot by the Supreme Court of Texas.
- 1999** Legislature mandated immunity from liability for Commission members, special masters, special counsel, and Commission employees while acting within the scope of their official duties. Also provided for exemptions from discovery and clarified provisions relating to confidentiality.

ORGANIZATION

Commission

The 11-member Commission’s constitutional mandate is to take appropriate action in cases of judicial misconduct or incapacity, including discipline, education, censure, or recommendation for removal from office. The Commission’s actions enforce the Code of Judicial Conduct, which is promulgated by the Texas Supreme Court, and enforces standards of judicial conduct established by the Texas Constitution. The Commission also oversees the operations of the agency generally and through delegation of authority to the Executive Director, with oversight authority to direct the agency and its budget. The Commission provides guidelines with respect to case management performance, and maintains the exclusive right to determine instances of misconduct.

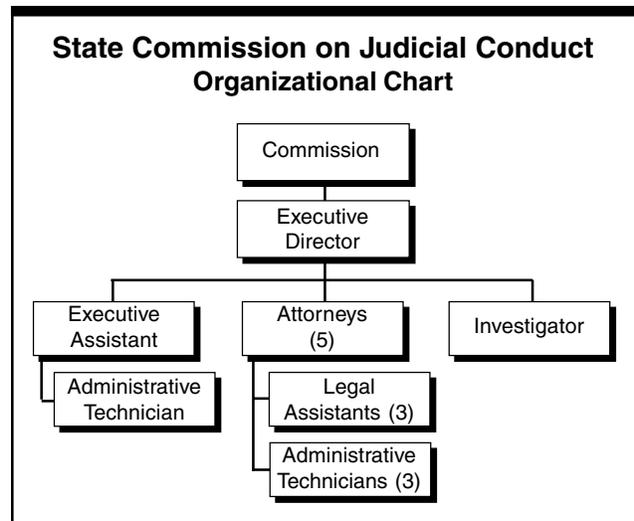
The Commission
meets in Austin at
least six times a year.

In general, the Commission meets in Austin at least six times a year, but the number of meetings may increase because of caseload. Commission members serve six-year terms, and annually elect a Chair, Vice-Chair, and Secretary. The Supreme Court appoints five specified judicial members, the Governor appoints four public members, and the Board of Directors of the State Bar appoints two attorneys. The chart on page 34, *Commission Members*, identifies the Board members, their term of office, qualification, who appointed them, and their place of residence.

Staff

The Executive Director oversees the agency’s operations. Legal and support staff, with the help of an investigator, investigate complaints and present them to the Commission members. The *State Commission on Judicial Conduct Organization Chart* depicts the organization of the agency. The Commission employs 15 staff, all of whom work in its Austin headquarters. The Commission has no field offices, but staff may travel throughout the state for investigations or formal proceedings.

A comparison of the agency’s workforce composition to the minority civilian labor force over the past three years is shown in Appendix A, *Equal Opportunity Employment Statistics—Calendar Years 1997-1999*. The Commission has generally exceeded civilian labor force levels for each job category.



Commission Members			
Name	Term	Qualification (Appointed By)	Residence
Hon. William G. "Bud" Arnot, Chair	1/21/97 - 11/19/01	Chief Justice, 11th Court of Appeals (Supreme Court)	Eastland
Hon. L. Scott Mann, Vice Chair	11/27/95 - 11/19/01	Public Member (Governor)	Lubbock
Hon. Michael O'Neal, Secretary	3/17/98 - 11/19/03	Chief Judge, Dallas Municipal Court (Supreme Court)	Dallas
Hon. Keith Baker	3/17/98 - 11/19/03	Justice of the Peace (Supreme Court)	San Antonio
Hon. Jayne Brittingham	5/30/00 - 11/19/05	Public Member (Governor)	Mansfield
Hon. Martin J. Chiuminatto	3/17/98 - 11/19/03	Judge, County Court at law (Supreme Court)	Kingsville
Hon. Dee Coats	5/13/98 - 11/19/03	Public Member (Governor)	Houston
Hon. Wallace Jefferson	11/20/99 - 11/19/05	Attorney (State Bar)	San Antonio
Hon. Gilbert Martinez	5/13/98 - 11/19/03	Public Member (Governor)	Austin
Hon. Kathleen Olivares	2/25/00 - 11/19/05	Judge, 205th District Court (Supreme Court)	El Paso
Hon. Blake Tartt	1/29/97 - 11/19/01	Attorney (State Bar)	Houston

FUNDING

Revenues

In fiscal year 1999, the Commission received a total of \$706,977 — \$609,281 in general revenue, and \$97,696 as part of the Judicial Conduct Task Force Grant provided by the Office of the Governor's Criminal Justice Division. The Commission used the grant to fund three staff positions. Because the general appropriations for fiscal years 2000 and 2001 provide funding for these positions, the grant has been discontinued.

Expenditures

The Commission has a single goal called administration and enforcement. In fiscal year 1999, the agency spent \$734,928. Appendix B shows the Commission's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services.

AGENCY OPERATIONS

The Commission's mission is to investigate and take appropriate action in cases of judicial misconduct or incapacity of judges and judicial officers, including discipline, education, censure, or removal from office. The Commission may dismiss a complaint or may order a public or private admonition, warning, or reprimand, or may require the judge to obtain additional training or education. A judge may be required to undergo physical or psychiatric examination. Further, a judge indicted with a felony offense or charged with a misdemeanor involving misconduct in office may be suspended from office, with or without pay, pending resolution of the criminal charges. The Commission may seek the removal or censure of a judge through formal proceedings, a procedure that is similar to a trial.

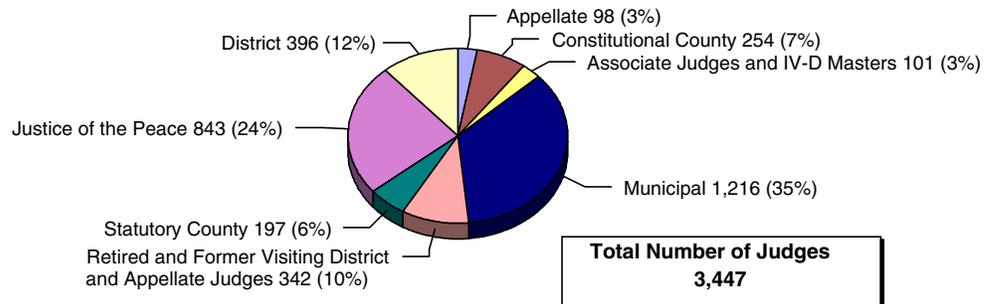
The Commission exercises jurisdiction over more than 3,450 judges and judicial officers in Texas relative to misconduct or disability. Such jurisdiction includes appellate judges, district judges, statutory and constitutional county judges, justices of the peace, municipal judges, associate judges, masters, magistrates, and retired and former judges who are available for assignment as visiting judges. Texas is one of the few states in the nation with a large number of non-lawyer judges. Of the 254 county judges across the state, fewer than 50 are attorneys. Non-lawyers serve in 805 of the 843 justice of the peace courts, and about half of the 1,216 municipal judges are not attorneys. The pie charts on page 36, *Court Structures of Texas*, and *Percentage of Complaints Filed by Category of Judge*, provide more information about the judges under the Commission's jurisdiction.

Judicial Education and Standards

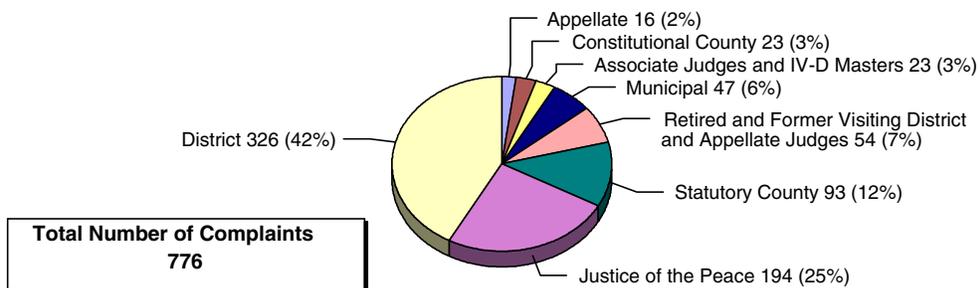
When judges enter office, they must take training from one of the judicial training schools, and complete continuing education requirements every year. The schools also provide judges with reference materials, such as bench books, to guide judges about their responsibilities. The Texas Justice Court Training Center serves Justices of the Peace; the Texas Municipal Courts Education Center serves municipal court judges; the Texas Association of Counties serves constitutional county judges; and the Texas Center for the Judiciary serves statutory county, district, appellate, and retired judges who are eligible to sit by assignment.

In addition, the Code of Judicial Conduct establishes basic standards for ethical conduct of judges. Set out in the form of canons, the Code includes guidelines on performing duties without bias or prejudice, providing the right to be heard, ex parte communication, administrative responsibilities, conflicts of interest, and inappropriate political activity. The Code is promulgated by the Texas Supreme Court.

Court Structures of Texas



Percentage of Complaints Filed by Category of Judge Fiscal Year 1999

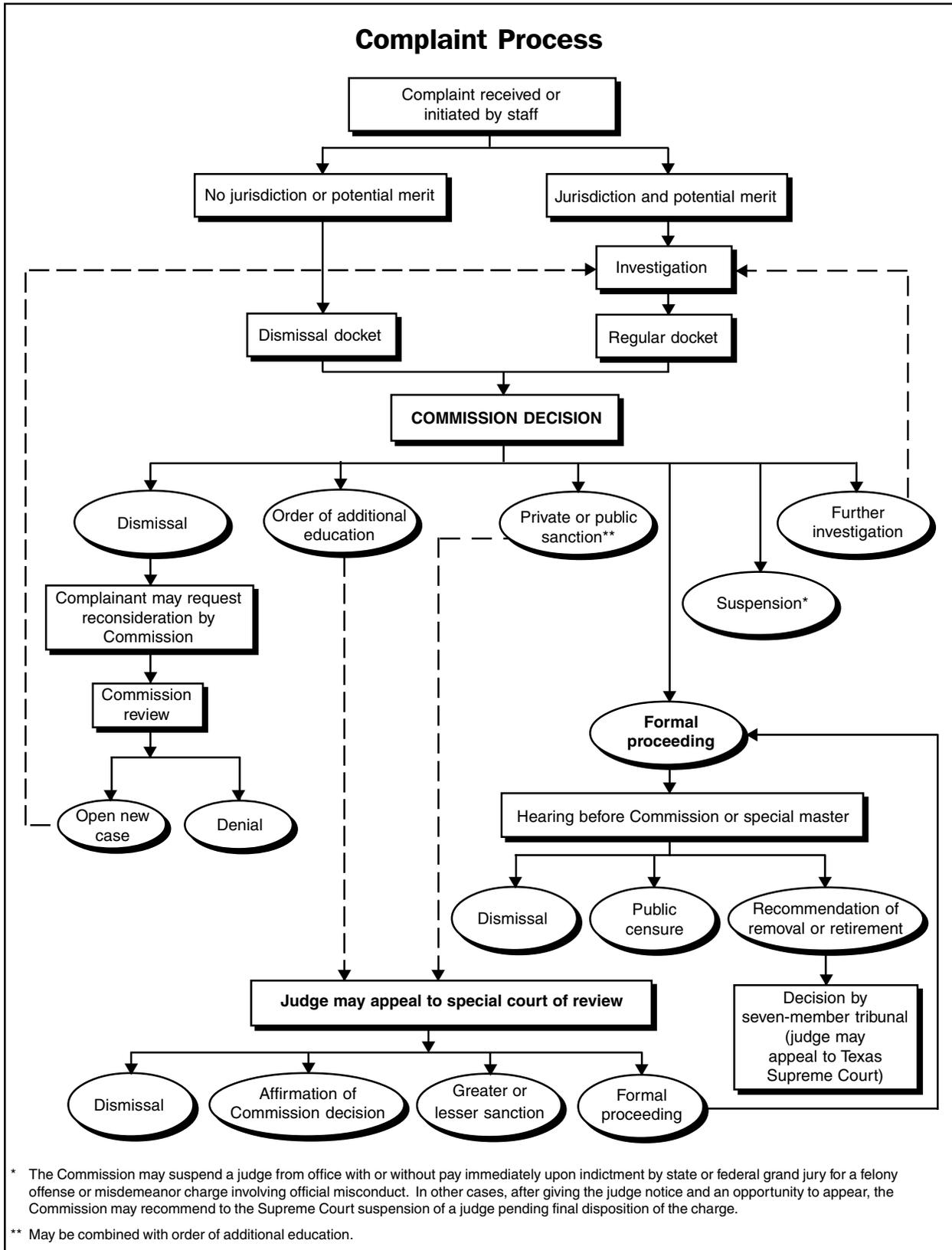


The flowchart on page 37, *Complaint Process*, shows how the agency carries out its mission. The five main stages in the process are described below.

Receipt of Complaint

Complaints or allegations of misconduct can be initiated in several ways. People may file complaints in person, or mail or phone in their complaints, but all complaints must be reduced to writing before the investigation process begins. In each case, agency staff interview the complainant, and acknowledge and document the complaint. The Commission may also initiate the complaint process, reviewing information from sources such as the media or the Internet. Under the Texas Constitution, the Commission may allow complainants to remain confidential. The Commission also accepts anonymous complaints. However, the most common complaints are initiated by phone, and all identities are revealed.

Most complaints are initiated by phone.



Tentative Decision

After receiving a complaint, the staff performs an evaluation or preliminary investigation to determine whether the complaint is of potential merit and within the Commission's jurisdiction. If the staff decides the complaint has no merit or is not within its jurisdiction, the complaint goes on the recommended dismissal docket for action by the Commission. For example, complaints without merit include those in which a complaint is dissatisfied with a judge's decision, but the complaint does not allege misconduct. If the staff determines that the complaint has merit and is within its jurisdiction, the staff begins an investigation, notifying the judge and requesting a response.

Investigation

The Commission's legal staff and investigator conduct an investigation of a case by reviewing and analyzing all information presented with the initial complaint, as well as interviewing the parties involved and witnesses. In some cases, staff may seek additional information or clarification by contacting the complainant or the attorneys involved in the litigation. They may also contact government officials, including law enforcement, court personnel, and auditors. Staff conducts most investigations from Austin, contacting people by telephone, but may travel in some cases.

Staff may recommend suspension of a judge who has been indicted for a crime before formally presenting the case to the Commission.

Staff presents all complaints received to the Commission. The agency has no administrative dismissal of complaints. However, the staff may recommend suspension of a judge who has been indicted for a crime before formal presentation of a case to the Commission. In these cases, the Commission members vote by telephone poll. The judge has the right to contest a suspension and request a post-suspension hearing to be conducted by the Executive Director or Commission members. The full Commission then votes at a meeting on whether to uphold, terminate, or modify the suspension.

Commission Decision

The Commission makes decisions on cases in informal proceedings closed to the public as well as complainants. Staff presents the case, and judges may appear before the Commission to present their side and answer questions from staff and Commission members. In fiscal year 1999, 30 judges made informal appearances before the Commission. At this point, the Commission decides to dismiss the case entirely, order additional education, sanction the judge, pass for further staff investigation, or institute formal proceedings. The table, *Disposition of Cases—Fiscal Years 1997 – 2000*, shows the breakdown of Commission actions.

Disposition of Cases — Fiscal Years 1997-2000				
Disposition	FY 1997	FY 1998	FY 1999	FY 2000 (as of 6/12/00)
Total Number of Cases Disposed	830	909	856	864
Number of Disciplinary Actions	80	61	75	83
Judge removed because of criminal conviction	2	0	0	0
Judge removed by tribunal order	0	4	11	0
Order of suspension	2	1	1	2
Formal proceedings voted	8	5	1	4
Judge resigned in lieu of discipline	11	17	6	9
Sanctions				
Public censure	0	0	0	3
Public reprimand	1	1	7	14
Public warning	5	1	2	1
Public admonition	4	1	11	6
Public sanction combined with order for additional education	0	0	0	2
Private reprimand	6	2	6	4
Private warning	20	9	7	7
Private admonition	8	4	6	7
Private sanction combined with order for additional education	0	1	6	11
Order for additional education	13	15	11	13
Total Number of Cases Dismissed	750	848	781	781
Complaint moot	42	61	51	*
Complaint based on matter for an appellate court	35	55	54	*
Complaint based on matter within the judge's discretion	97	178	142	*
No misconduct	576	554	534	*
Requests by complainant for reconsideration of case	**	**	28	90
Considered by the Commission	**	**	0	15
Pending	**	**	0	33
Appeals by judge	0	0	0	4

*Number not yet available

**Number not tracked before fiscal year 1999

Dismissal

Upon dismissal of a complaint, staff notifies the complainant, and notifies the judge if the judge is aware of the complaint. At this point, the complainant may request that the Commission reconsider the case.

Orders of Additional Education

In cases where judges, in good faith, take judicial action that exceeds their authority or is contrary to procedural rules, the Commission may order additional education by itself or in combination with public or private sanctions. In these situations, the Commission contacts the appropriate judicial training center, which designates a mentor judge for one-on-one instruction to be completed within a specified time on particular subjects.

The Commission may order a judge to complete one-on-one instruction.

For example, the Commission may order additional education on ex parte communication, fiscal management for justice courts, jurisdictional limitations, and how to maintain the appearance of impartiality. The mentor judge then reports to the Commission on the progress made.

Sanctions

As it deems appropriate, the Commission uses, by order of severity, admonitions, warnings, and reprimands to privately or publicly sanction judges.

Private sanctions. The Commission orders private sanctions when a judge would benefit from a specific admonition, warning, or reprimand to avoid a particular action that violates the Texas Constitution, statutes, or the Code of Judicial Conduct. For example, the Commission issued a private reprimand when a judge publicly endorsed another candidate for justice of the peace, a violation of the Code of Judicial Conduct. Private admonitions are less severe than warnings, which are less severe than reprimands.

Public sanctions. The Commission imposes public sanctions in more serious matters, such as when one judge dismissed traffic cases in exchange for defendants paying a specified amount in “donation” to the judge’s local law enforcement charity. Public sanctions detail the actions of the judge and the provisions of the Code of Judicial Conduct that have been violated. The public nature serves to educate judges throughout the state about conduct the Commission finds unethical. The Commission may issue public admonitions, warnings, or reprimands. The Commission publishes public sanctions in its annual report, and sends notice of public sanctions to state and local media and public officials.

Formal Proceedings

In formal proceedings, the Commission may itself hold a trial, or request the Texas Supreme Court to appoint a special master. The matter remains confidential until the fact-finding hearing begins. If a special master holds the trial, he or she reports findings of fact to the Commission, which then holds a public hearing to consider the special master's report. The Commission may then adopt the findings in whole or in part, or totally reject them. The Commission also makes conclusions of law, and may request additional evidence, dismiss the matter, publicly censure the judge, or recommend removal. While these proceedings become public once they begin, no advance notice to the public is allowed. Over the past four years, between zero to four formal proceedings have occurred each year.

Appeal

Within 30 days of the date the Commission issues a public or private sanction or order of education, the judge may appeal by requesting the Texas Supreme Court to appoint three appellate judges to act as a special court of review. The special court holds a trial and considers the case from the beginning, as if the Commission had taken no previous action. The judge is not entitled to a jury, and all documents filed and evidence received are public. The special court may dismiss the case, affirm the Commission's decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings.

Removal

The Commission itself cannot remove a judge. If the Commission recommends removal, it requests the Texas Supreme Court to appoint a seven-judge review tribunal to hear the matter and write an opinion. The tribunal may request more evidence, dismiss the matter, publicly censure the judge, or enter an order removing the judge from office. The tribunal may also prohibit a judge from holding a future judicial office in Texas. An appeal from a review tribunal order is to the Texas Supreme Court.

A judge may appeal a Commission decision by asking the Texas Supreme Court to appoint a special court of review.

Grounds for Removal

The Texas Constitution provides that grounds for removal of a judge include:

- willful or persistent violation of rules promulgated by the Texas Supreme Court,
- incompetence in performing the duties of the office,
- willful or persistent conduct that is clearly inconsistent with the proper performance of judicial duties, or
- willful or persistent conduct that casts public discredit upon the Judiciary or administration of justice.

APPENDICES

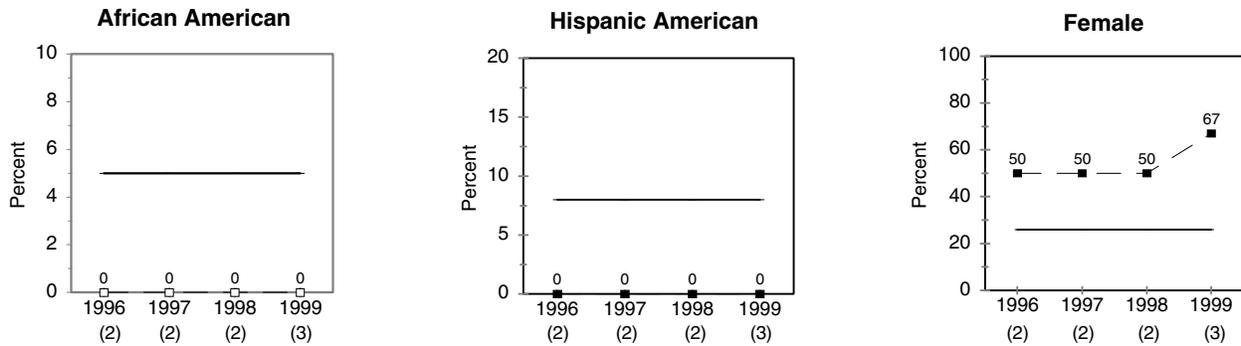
Appendix A

Equal Employment Opportunity Statistics

1996 to 1999

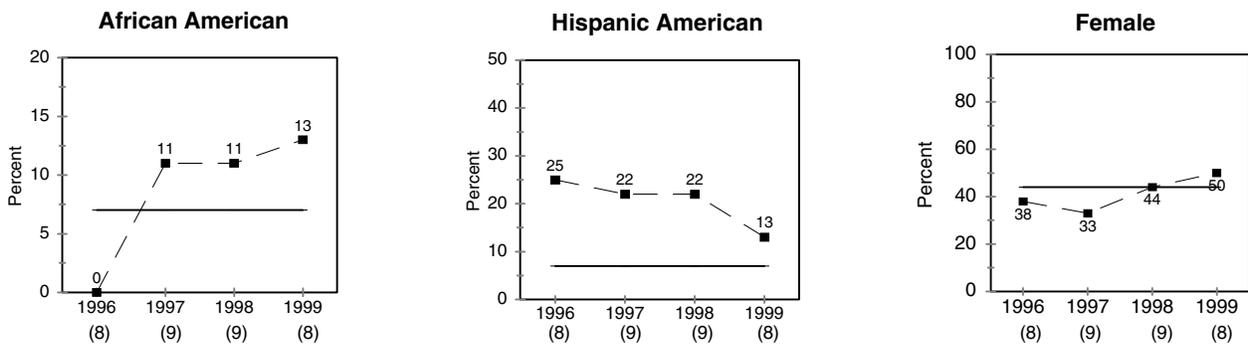
In accordance with the requirements of the Sunset Act,¹ the following material shows trend information for the agency's employment of minorities and females. The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.² In the charts, the flat lines represent the percentages of the statewide civilian labor force that African Americans, Hispanic Americans, and females comprise in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1996 to 1999. Finally, the number in parentheses under each year shows the total number of positions in that year for each job category. The Commission only employs a total of 15 FTEs, resulting in only two to three positions in many of the categories.

State Agency Administration



The agency did not hire any African Americans or Hispanic Americans in administration, but exceeded the civilian labor force percentages for females in this job category.

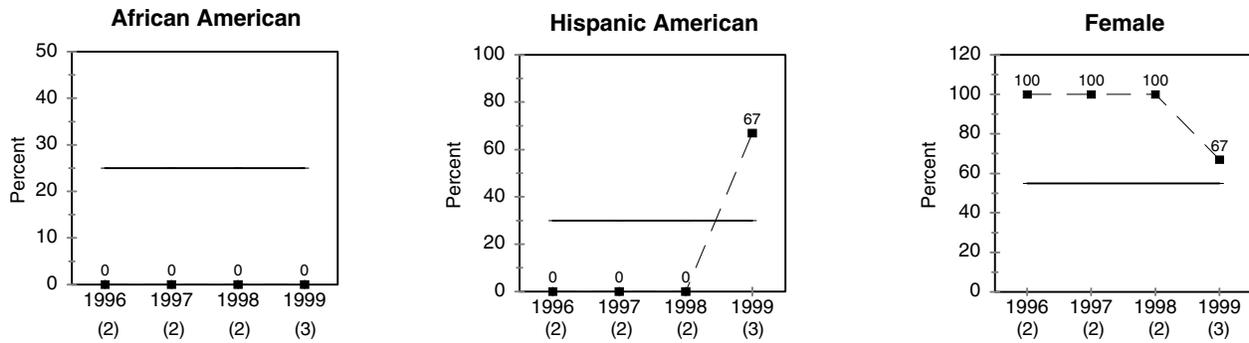
Professional



In the professional category, the agency generally exceeded the percentages for African Americans and Hispanic Americans, and has shown improvements for females from 1997 to 1999.

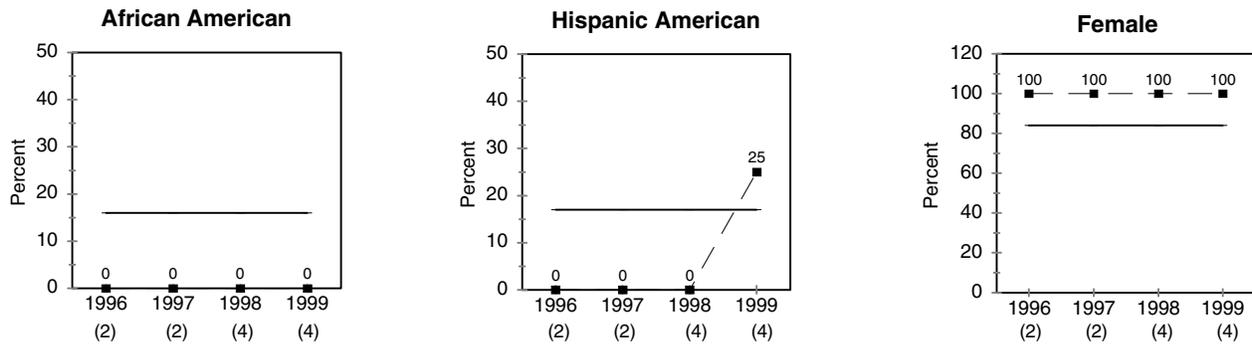
Appendix A

Paraprofessional



The agency has not hired any African Americans in this job category. The agency increased the number of Hispanic Americans in 1999, exceeding the civilian labor force percentage. Although the number of females dropped in 1999, the agency has consistently exceeded the civilian labor force percentage.

Administrative Support



The agency has not hired any African Americans in administrative support, but did hire one Hispanic American in 1999, exceeding the civilian labor force percentage. The agency has consistently exceeded the civilian labor force percentage for females in administrative support.

¹ Texas Government Code Ann., ch. 325, sec. 325.011(9)(A).

² Texas Labor Code Ann., ch. 21, sec. 21.501 (formerly required by rider in the General Appropriations Act).

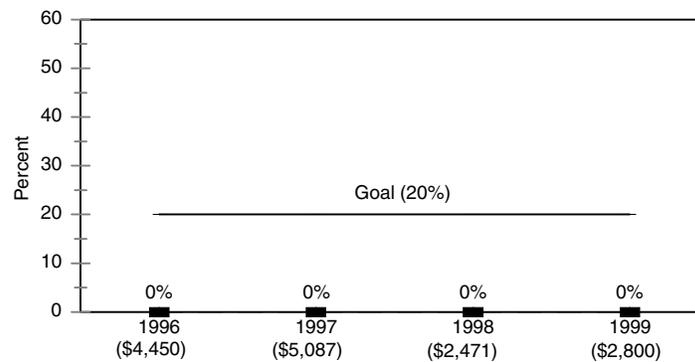
Appendix B

Historically Underutilized Businesses Statistics

1996 to 1999

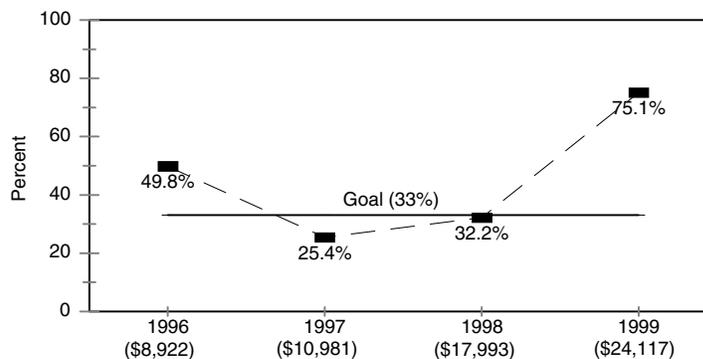
The Legislature has encouraged state agencies to use Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. In accordance with the requirements of the Sunset Act,¹ the following material shows trend information for the agency's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the General Services Commission's enabling statute.² In the charts, the flat lines represent the goal for each purchasing category, as established by the General Services Commission. The dashed lines represent the agency's actual spending percentages in each purchasing category from 1996 to 1999. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

Professional Services



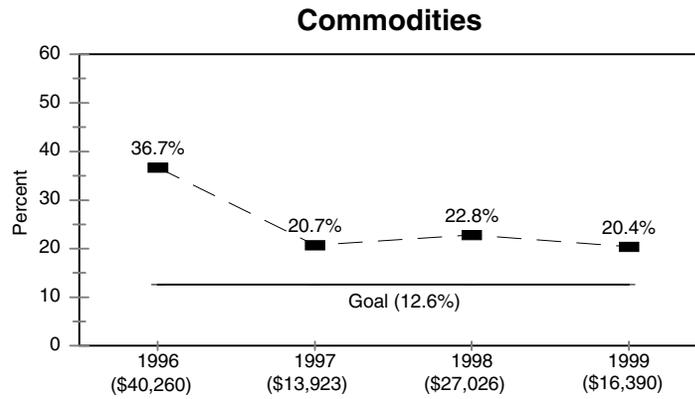
The agency has not purchased any professional services from HUBs between 1996 and 1999.

Other Services



The agency exceeded the state goal in 1996 and 1999, and fell slightly below the goal in 1997 and 1998.

Appendix B



The agency exceeded the state goal from 1996 to 1999.

¹ Texas Government Code Ann., ch. 325, sec. 325.011(9)(B) (Vernon 1999).

² Texas Government Code Ann., ch. 2161. (some provisions were formerly required by rider in the General Appropriations Act).

Appendix C

Results of Sunset Survey of Complainants and Judges

As part of this review, Sunset staff designed a survey to obtain input from individuals and groups who have been a part of the judicial discipline process. In June 2000, Sunset staff sent this survey to 50 judges chosen by random method, and to 18 other interested parties, such as judicial training school staff and groups representing citizens and lawyers who interact with the Commission on Judicial Conduct. To protect confidentiality, the Commission assisted Sunset by randomly selecting and sending the survey to 170 people who filed a complaint against a judge in fiscal years 1999 and 2000, 10 percent of the total; and 170 judges who had complaints filed against them in fiscal years 1999 and 2000, 10 percent of the total.

Sunset staff received a total of 86 responses, or 21 percent, of the total number of people surveyed. This number included responses from 39 people who filed complaints against a judge, 37 judges who had complaints filed against them, and 10 other interested parties.

The chart below summarizes the responses, and shows selected comments made by survey respondents.

Survey Results	
Question	Responses
How well does the Commission provide information about its process?	<p>Most complainants said not very well. Many suggestions on how to provide better information and better publicize activities are included in the responses to other questions.</p> <p>Many judges said well or very well, although some said not too well.</p> <p>Judges' comments included the following:</p> <ul style="list-style-type: none"> • "I was notified in writing what the complaint alleged and was told to file a response by a certain date. I don't remember being advised of how the process worked." • "Only on request" • "Not that well. A lot of judges are unaware that they do not know about complaints unless Commission chooses to investigate, etc."
How well does the Commission make information easily accessible and easy to understand?	<p>Many complainants said they do not understand the statutes, codes, and rules referred to in the Commission's initial letter. A number of complainants enclosed a copy of the letter to illustrate. One complainant said they do not give a valid explanation of their findings. Complainants' comments included the following:</p> <ul style="list-style-type: none"> • "Their counsel requested a shopping list of requests for additional information about my complaint. They did not offer any other suggestions or offers of information." • "The Commission places the inmate, who is a layman to filing procedures and to researching the legal authorities, to the same high standards of a lawyer, to try and convince the Commission to rule on his behalf." <p>Many, but not all, judges said they understood everything and that they could simply check the codes cited. Judges' comments included the following:</p> <ul style="list-style-type: none"> • "It would have been helpful to know, step by step, what process would occur, e.g., if an investigator would look at the complaint and response and make a recommendation to the Commission, if my appearance had been required, how long I would have to make arrangements to appear, if I needed legal

Appendix C

Survey Results	
Question	Responses
How well does the Commission make information easily accessible and easy to understand? (cont.)	<p>counsel, if a formal hearing was required what the format of the hearing would be, so on and so forth. (I was able to obtain this information by calling a judge who had experienced the process and by talking with the attorney who appeared with him).”</p> <ul style="list-style-type: none"> • “Have heard only one presentation from a Commission representative. This should be part of the required hours of judicial education for judges.” • “Information not easily accessible”
How can the Commission improve the information it provides?	<p>Complainants’ suggestions included:</p> <ul style="list-style-type: none"> • Brochures on counter in judges’ offices, lawyer’s offices, and courthouse bulletin boards • Legal help-line • More information regarding government codes and how they apply • When a complaint is filed, the Commission should send a standard information packet that the average person can understand, including a brochure, the Commission’s functions, how to file a complaint, and a concise checklist of its responsibilities, powers, and actions it considers misconduct • Contact the complainant by phone or in person • Have an open ended offer of help and/or information along with the complaint form • Give a better explanation of the process <p>Judges’ suggestions included:</p> <ul style="list-style-type: none"> • Send out information brochures • Booklet or pamphlet to all judges • The recent Bar Journal article on the Commission needs to run at least annually • Listen to complaints about process, mailouts, Web page
How well does the Commission provide a fair process?	<p>Most of these answers were not detailed, and depended on whether the person was upset or happy with their results.</p> <p>One complainant commented, “the Commission is pretty fair but I think we should be given an opportunity to speak with them on a one-on-one basis to voice our concerns.”</p>
Does the Commission handle complaints in a timely manner?	<p>Most respondents said yes. Some complainants said the investigation must have been too quick because the Commission found no misconduct.</p>
How well does the Commission keep complainants and respondents informed of their case status?	<p>Complainants’ comments included the following:</p> <ul style="list-style-type: none"> • “Commission should periodically update the complainant, via mail, on the status” • “The Commission does nothing to keep a complainant informed after the initial complaint is filed. I have not been given any information since this time. I have been told that anything from this point on is confidential. I will not be told of what is going on with the judge. The judge is provided with all the information on my family, why should we not be provided with the

Appendix C

Survey Results	
Question	Responses
<p>How well does the Commission keep complainants and respondents informed of their case status? (cont.)</p>	<p>information being sent to him?” (also similar comments from other complainants)</p> <ul style="list-style-type: none"> • “Only informed of your conclusion” • “None at all except a dismissal letter” <p>Judges’ comments included the following:</p> <ul style="list-style-type: none"> • “They did a moderately good job of keeping me informed; however, going through the process, there were times I wanted to check on the status, but didn’t feel I had anyone to ask (I wasn’t sure I would have been talking to ‘friend’ or ‘foe’).” • “I had no idea until I received this survey. It would be good to know if ‘complaints’ are made versus letters of unhappiness with a judge’s ruling. Perhaps those should be deemed ‘reports’ and not complaints. A telephone number and contact person would be good to have. If a report or complaint is made and the judge never knows about it, how does this help anybody? How does a judge answer questions on malpractice liability policies as to whether any complaints are pending or have been filed if a judge never knows anything until a real viable complaint is made? If we call to get further info (such as receiving this survey), then do we file or respond to questions that yes, a complaint was filed, or do we still answer no - particularly if the Commission felt it was not worth pursuing?” • “Apparently not too well since I was never advised a complaint was filed against me, the ultimate disposition of it, or who filed it.”
<p>How thoroughly does the Commission investigate complaints?</p>	<p>Most of these answers were not detailed, and depended on whether person was upset or happy with results.</p> <p>Complainants’ comments included the following:</p> <ul style="list-style-type: none"> • “Who knows? No feed back at all. If they did an investigation into my allegations, I don’t know what-who-when-where-how or if they determined irregularities occurred. Plenty of documented proof was offered.” • “Difficult for indigent complainants to furnish documents”
<p>How can the Commission improve its complaint process?</p>	<p>Complainants’ suggestions included making the complaint process more accessible to the average citizen; stating specifically what the Commission wants; keeping complainants promptly informed of status, investigation process, and how and why a complaint was dismissed.</p> <p>Judges’ suggestions included:</p> <ul style="list-style-type: none"> • Do not assume or treat the complainant as if he were guilty; give more details of the process; assign a staff member who will remain neutral in the process to answer questions of both sides • Publish Commission’s process to those affected by it • Eliminate anonymous complaints that action is taken on • Advise every judge of every complaint filed against him, even if frivolous, and send a copy of the complaint, and the name of the complainant • Be consistent • Add staff and/or investigators

Appendix C

Survey Results	
Question	Responses
How well does the Commission protect confidentiality of judges and people who file complaints?	Most people said well. Many complainants and judges remarked that the Commission must protect confidentiality so well that they have never heard anything about their own cases or others.
Are there any situations where confidentiality requirements hinder the Commission from carrying out its functions?	Almost all respondents said no or unknown. Interested parties commented that relaxing confidentiality has very bad effects, and notice to judges of unfounded complaints may help judges review his or her behavior - the Commission could keep the complainant's name secret but give substance of allegation.
How well do the Commission's sanctions address judges' misconduct?	<p>Many complainants said they could not tell if sanctions address misconduct because information is not provided to the complainant.</p> <p>Judges' comments included:</p> <ul style="list-style-type: none"> • "I have seen them be too harsh on other judges. They've treated me fairly." • "It appears the sanctions address the misconduct, however, the sketchy details I see in 'In Chambers' and the State Bar Journal may not give us enough details to pass on this." • Should be something between public reprimand and removal from bench - like suspend without pay, no retirement accumulation, etc. <p>One interested party wrote, "I believe the Commission is doing a good job here. Until the new director arrived, the Commission was more interested in resignations or personal change than in using sanctions to educate judges and the public. That has changed."</p>
How well does the Commission publicize actions taken against judges?	Some complainants wrote that they didn't know about the Commission before filing a complaint. One judge wrote that the annual report on Commission activity needs to be more widely disseminated.
How can the Commission better publicize its functions and results?	<p>Complainants' suggestions included:</p> <ul style="list-style-type: none"> • Billboards to publicize its function, website/newspapers for sanctions • Send information to libraries • Press releases to news media, take out small ads in local newspapers, and publish all actions on Web site • Should be public record when a judge is sanctioned • Comply with all existing open records acts • Quarterly bulletin stating which judges are being investigated • More advertisements and public awareness through local and national media • Notify the bar associations in the administrative district where the judge sits • Public service announcements • Legal help-line or online service to provide basic legal information staffed by volunteer members of State Bar - paid for by merging the Commission with the State Bar

Appendix C

Survey Results	
Question	Responses
<p>How can the Commission better publicize its functions and results? (cont.)</p>	<p>Judges' suggestions included:</p> <ul style="list-style-type: none"> • A newsletter to all judges (those affected and not affected) of the Commission actions on each complaint that comes out annually or semi-annually • Mailings to Bar members, not just Journal articles • Each period the Commission needs to publish statistics reflecting the number of complaints, the number of frivolous complaints, and the number that resulted in sanctions. <p>Other interested parties suggested that many existing newsletters such as Office of Court Administration and Texas Center for Judiciary could be used, and that the Commission should stay in close contact with interested news media and explain its special functions in balancing the interests of the public and the judiciary.</p>
<p>How well does the Commission prevent judicial misconduct?</p>	<p>Quite a few judges said that the Commission cannot prevent misconduct, but that its duty is to punish misconduct.</p> <p>One interested party wrote, "the Commission tries to speak at Judicial Conferences, etc., and the Judicial Section issues advisory opinions. I know the Commission is going to become more proactive with statements, Code suggestions, etc."</p>
<p>How, specifically, can the Commission work to better prevent judicial misconduct?</p>	<p>Many complainants suggested that the Commission should have the power to perform surprise inspections, videotape courtrooms, or randomly review judges. Other suggestions included giving the Commission the ability to remove a judge from office upon discovery of major wrongdoings, and making judges' backgrounds public, especially for reelection.</p> <p>Most judges suggested education programs, including making judges aware of the common kinds of complaints that are filed and can be avoided, education on what is not acceptable conduct, more seminar time that presents common ethical dilemmas, more education for non-lawyer judges, a greater presence at judicial seminars, and more frequent, stronger ethics programs. One judge also suggested publishing a newsletter every six months to talk generally about cases.</p> <p>Other interested parties suggested more frequent reports instead of just annual reports, and to aid and advise judges of the responsibilities under the Judicial Conduct Code and the penalties for failing to comply with those responsibilities.</p>
<p>Are there other specific functions the Commission should perform?</p>	<p>Complainants suggested mandatory sensitivity training for judges, and better educational pamphlets and staff attorneys to assist people who do not have lawyers.</p> <p>Judges suggested conducting workshops based on the disposition of complaints, and educating judges on better public relations with litigants and attorneys.</p>

Appendix C

Survey Results	
Question	Responses
<p>Is some other agency or group better equipped to perform the Commission's duties?</p>	<p>Many respondents said no or did not answer this question. Complainant suggestions included a federal prosecutor or foreman of federal grand jury, Supreme Court, State Bar, Texas Senate, and Governor's Office. One judge said that "discipline and sanctions should be the role of the Commission - the Texas Center for the Judiciary should conduct seminars on how to avoid appearance of misconduct."</p>
<p>Should any changes be made to the Commission's composition, currently five judges, two attorneys, and four public citizens?</p>	<p>Many respondents, in all categories, said the composition is a good mix. Several complainants suggested decreasing the number of judges and lawyers, and increasing the number of public citizens. A few judges suggested decreasing or eliminating public citizens. One interested party suggested adding a retired judge, while another suggested restructuring the Commission to include one criminal defense attorney, one prosecutor, one civil litigator, one district judge, one county judge, one county court at law judge, two laymen, and one legislator.</p>
<p>Please add any other comments about the Commission on Judicial Conduct. If you suggest any changes, please provide: 1) a brief statement of the suggested change, 2) background information on how the current system works and a description of what you would like to see changed, 3) benefits of your recommended change, and 4) any potential difficulties that may arise from implementing your recommendation.</p>	<p>Complainants' suggestions included:</p> <ul style="list-style-type: none"> • Names of judges should be published and complainant should be able to appear before these people • Add an independent staff attorney to assist complainants • Dismissal letter should indicate the Commission's vote • Complainant should receive copy of judge's written response, or judge's testimony should be recorded and made available to complainant. <p>Judges' comments included:</p> <ul style="list-style-type: none"> • "The filing of a complaint should be governed by a similar standard to Rule 13 of the Texas Rules of Civil Procedure. If it's palpably frivolous there should be a sanction." • "If a judge has a question about whether some act is permissible or not, the Ethics Commission will advise the judge in writing (although it may take months), but the Conduct Commission, which will not issue advice, may ignore the Ethics Commission opinion and find the judge did something wrong by following the Ethics Commission's advice, if a complaint is later filed." <p>One interested party suggested: "expand Commission staff and perhaps Commission itself to allow them to give advice and render both formal and informal opinions on ethical matters, and to allow confidentiality in the rendering of those opinions, so that judges asking for advice are not fearful of prosecution."</p>

Appendix D

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the State Commission on Judicial Conduct.

- Worked extensively with the Commission Executive Director and staff.
- Met and spoke on the phone with Commission members.
- Reviewed agency documents and reports, complaint files, and transcripts of public proceedings.
- Worked with the State Auditor's Office, Legislative Budget Board, Office of the Attorney General, legislative committees, and key legislators' staff.
- Reviewed state statutes; the Texas Constitution; and reports by the State Auditor's Office, Legislative Budget Board, and *Texas Bar Journal*.
- Surveyed and conducted telephone interviews with people who filed complaints, judges, special masters, judicial training school directors, and other interested parties.
- Attended a public hearing.
- Attended an ethics training seminar for justices of the peace.
- Performed comparative research of other states' judicial conduct organizations by interviewing executive directors over the telephone, searching the Internet, and reviewing American Judicature Society publications.

**STATE COMMISSION ON
JUDICIAL CONDUCT**

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