State of Kansas

Commission on Judicial Qualifications

1991 Annual Report

FROM THE CHAIR

From its inception, this Commission has viewed its role as educational as well as disciplinary. In dealing with the public, the Commission attempts to educate the public as to the rules of judicial conduct and to act as a sounding board for anyone who believes a judge has acted improperly. Frequently, a better understanding of the rules and an opportunity to air the grievance resolves the complaint.

With this annual report, the Commission embarks on a new educational endeavor. Judges often ask about the operation of the Commission and the nature of complaints which come before it. This report has been expanded to include more information about the operation of the Commission and a particular focus has been added on the types of complaints which have come before the Commission in the past year. We hope that you find this increased detail helpful in understanding your obligations under the Code of Judicial Conduct.

It has been our experience as a Commission that the judges of the State of Kansas seek to comply with the Code and are cooperative when called upon by the Commission to respond to a complaint. We can all take pride in our judicial system and the high ethical standards which have become its tradition.

J. Patrick Brazil, Chair
Kansas Commission on
Judicial Qualifications

June 1992

1991 ANNUAL REPORT

OF THE

KANSAS COMMISSION ON JUDICIAL QUALIFICATIONS

COMMISSION MEMBERS:	Term Expires
Judge J. Patrick Brazil - Chair	1995
Mikel L. Stout - Vice-Chair	1996
Charles S. Arthur	1994
Kenneth C. Bronson	1994
Judge Steven P. Flood	1993
John J. Gardner	1993
Dr. Nancy Bramley Hiebert	1996
Judge James J. Noone	1994
Judge James W. Paddock	1996

SUPREME COURT LIAISON

Justice Fred N. Six

COMMISSION STAFF

Carol Gilliam Green, Secretary
Carol J. Deghand, Office Manager

COMMISSION OFFICE

Kansas Judicial Center, Room 374
301 SW Tenth Avenue
Topeka, Kansas 66612-1507

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A BRIEF HISTORY OF THE COMMISSION

The Kansas Commission on Judicial Qualifications was established by the Supreme Court of the State of Kansas on January 1, 1974. The Commission, created under the authority granted by Article III, Section 15 of the Kansas Constitution and in the exercise of the inherent powers of the Supreme Court, is charged with assisting the Supreme Court in the exercise of the court's responsibility in judicial disciplinary matters.

The Commission consists of nine members including four active or retired judges, three lawyers, and two non-lawyers. All members are appointed by the Supreme Court and serve four-year terms. Two members of the Commission have served continuously since the Commission began its work on January 1, 1974. They are Kenneth C. Bronson of Topeka, a non-lawyer member, and Charles S. Arthur of Manhattan, a lawyer member.

Georgia Neese Gray of Topeka, a non-lawyer member, served on the Commission from January 1, 1974, until her resignation on January 14, 1992. Justice Fred N. Six, Lawrence, served as a lawyer member from January 1, 1974, until his appointment to the appellate bench in 1987. Others who have served with distinction include L.A. McNalley (Salina) and O.Q. Claflin, III (Kansas City), retired judges; Bert Vance (Garden City), Harold R. Riggs (Olathe), Brooks Hinkle (Paola), M.V. Hoobler (Salina), and Lewis C. Smith (Olathe), who served while active judges; Robert H. Nelson (Wichita) and Edward F. Arn (Wichita), lawyer members.

Those who have chaired the Commission include:

Judge L.A. McNalley	1974 - 1977
Fred N. Six	1977 - 1981
Kenneth C. Bronson	1981 - 1983
Charles S. Arthur	1983 - 1985
Judge Lewis C. Smith	1985 - 1986
Judge O.Q. Claflin	1986 - 1988
Judge Steven P. Flood	1988 - 1990

Lewis C. Carter served as the Commission's Secretary from January 1, 1974, until his retirement on August 30, 1991.

HOW THE COMMISSION OPERATES

Jurisdiction/Governing Rules

The Commission's jurisdiction extends to approximately 500 judicial positions including justices of the Supreme Court, judges of the Court of Appeals, judges of the district courts, district magistrate judges, and municipal judges. This number does not include judges pro tempore and others who, from time to time, may be subject to the Code of Judicial Conduct.

The Supreme Court Rules governing operation of the Commission are found in the Kansas Court Rules Annotated. 1991 Kan. Ct. R. Annot. 340-352.

Staff

The Clerk of the Supreme Court serves as secretary to the Commission pursuant to Supreme Court Rule 603. The secretary acts as custodian of the official files and records of the Commission and directs the daily operation of the office. A deputy clerk, Carol Deghand, manages the operation of the office.

The Commission also retains an examiner, a member of the Kansas Bar who investigates complaints, presents evidence to the Commission, and participates in proceedings before the Supreme Court.

Initiating a Complaint

The Commission is charged with conducting an investigation when it receives a complaint indicating that a judge has failed to comply with the Code of Judicial Conduct or has a disability that seriously interferes with the performance of judicial duties.

Any person may file a complaint with the Commission. Initial inquiries may be made by telephone, by letter, or by visiting the Clerk's Office personally. All who inquire are given a copy of the Supreme Court Rules Relating to Judicial Conduct, a brochure about the Commission, and a complaint form. The complainant is asked to set out the facts and to

state specifically how the complainant believes the judge has violated the Code of Judicial Conduct. Very often, the opportunity to voice the grievance is sufficient, and the Commission never receives a formal complaint. In any given year, one-fourth to one-third of the initial inquiries will result in a complaint being filed.

The remainder of the complaints filed come from individuals already familiar with the Commission's work or who have learned about the Commission from another source. Use of the standard complaint form is encouraged but not mandatory. If the complaint received is of a general nature, the Commission's secretary will request further specifics.

In addition to citizen complaints, the Commission may investigate matters of judicial misconduct on its own motion. Referrals are also made to the Commission through the Office of Judicial Administration and the Office of the Disciplinary Administrator.

Referrals are made through the Office of Judicial Administration on personnel matters involving sexual harassment. The Kansas Court Personnel Rules provide that, if upon investigation the Judicial Administrator finds probable cause to believe an incident of sexual harassment has occurred involving a judge, the Judicial Administrator will refer the matter to the Commission on Judicial Qualifications.

The Disciplinary Administrator refers complaints to the Commission if investigation into attorney misconduct implicates a judge. There is a reciprocal sharing of information between the two offices.

Commission Review and Investigation

When written complaints are received, all are mailed to the Commission for review at its next meeting. The Commission usually meets every other month. In the interim, if it appears that a response from the judge would be helpful to the Commission, the secretary may request the judge to submit a voluntary response. With that additional information, the Commission may be able to consider a complaint and reach a decision at the same meeting.

All complaints are placed on the Commission's agenda, and the Commission determines whether they will be docketed or remain undocketed. A docketed complaint is given a number and a case file is established.

Undocketed complaints are those which facially do not state a violation of the Code; no further investigation is required.

Appealable matters constitute the majority of the undocketed complaints and arise from a public misconception of the Commission's function. The Commission does not function as an appellate court. Examples of appealable matters which are outside the Commission's jurisdiction include: matters involving the exercise of judicial discretion, particularly in domestic cases; disagreements with the judge's application of the law; evidentiary or procedural matters, particularly in criminal cases; and allegations of abuse of discretion in sentencing.

Many complaints address the judge's demeanor, attitude, degree of attention, or alleged bias or prejudice. These are matters in which the secretary is likely to request a voluntary response from the judge and, based on that response, the Commission in some instances determines there has clearly been no violation of the Code.

These undocketed complaints are dismissed with an appropriate letter to the complainant and to the judge, if the judge has been asked to respond to the complaint.

Docketed complaints are those in which the Commission as a whole feels that further investigation is warranted. The secretary will likely have already requested a voluntary response from the judge in these matters.

The Commission has a number of investigative options once it dockets a complaint. Docketed complaints may be assigned to a three person subcommittee of the Commission for review and report at the next Commission meeting. These complaints may be referred to the Commission Examiner for investigation and report. Finally, the Commission may ask for further information or records from the judge.

Disposition of Docketed Complaints

After investigation of docketed complaints, the Commission may choose a course of action short of filing formal proceedings.

A complaint may be dismissed after investigation. On docketing, there appeared to be some merit to the complaint, but after further investigation the complaint is found to be without merit.

A complaint may be dismissed after investigation with caution. The Commission finds no violation in the instant complaint, but the judge is cautioned to avoid such situations in the future. Cautionary letters have been issued when alcohol consumption appears problematic or when there is a strong suggestion of inappropriate personal comment.

Letters of admonition are issued when some infraction of the Code has occurred, but the infraction does not involve a continuing course of conduct. Such letters may, for example, address isolated instances of delay, ex parte communication, or discourtesy to litigants or counsel.

A cease and desist order may be issued when the Commission finds factually undisputed violations of the Code which represent a continuing course of conduct. The judge must agree to comply by accepting the order, or formal proceedings will be instituted. Examples of conduct resulting in cease and desist orders include: activity on behalf of a political candidate or intervention with a fellow judge on behalf of family or friends.

Upon disposition of any docketed complaint, the judge and the complainant are notified of the Commission's action. Other interested persons may be notified within the Commission's discretion.

Confidentiality

Up to this point, all Commission action is confidential and remains so until a notice of formal proceedings is filed. Certain narrowly delineated exceptions to the rule of confidentiality exist.

Rule 607(c) provides a specific exception to the rule of confidentiality with regard to any information which the Commission considers relevant to current or future criminal prosecutions or ouster proceedings against a judge. Rule 607 further permits a waiver of confidentiality, in the Commission's discretion, to the Disciplinary Administrator and to the Supreme Court Nominating Commission, the District Judicial Nominating Commissions, and the Governor with regard to nominees for judicial appointments. The Commission may also, in its discretion, make public all or any part of its files involving a candidate for election or retention in judicial office.

Formal Proceedings

During the investigation stage prior to the filing of the notice of formal proceedings, the judge is advised by letter that an investigation is underway. The judge then has the opportunity to present information to the examiner.

If the Commission institutes formal proceedings, specific charges stated in ordinary and concise language are submitted to the judge. The judge has an opportunity to answer and a hearing date is set.

The hearing on a notice of formal proceedings is a public hearing. The judge is entitled to be represented by counsel at all stages of the proceedings, including the investigative phase prior to the filing of the notice of formal proceedings if the judge so chooses. The rules of evidence applicable to civil cases apply at formal hearings before the Commission. Procedural rulings are made by the chair, consented to by other members unless one or more calls for a vote. Any difference of opinion with the chair is controlled by a majority vote of those Commission members present.

The Commission Examiner presents the case in support of the charges in the notice of formal proceedings. At least three members of the Commission must be present when evidence is introduced. A vote of five members of the Commission is required before a finding may be entered that any charges have been proven.

If the Commission finds the charges proven, it can admonish the judge or recommend to the Supreme Court the discipline or compulsory retirement of the judge. Discipline means public censure, suspension, or removal from office.

The Commission is required in all proceedings resulting in a recommendation to the Supreme Court for discipline or compulsory retirement to make written findings of fact, conclusions of law, and recommendations which shall be filed and docketed by the Clerk of the Supreme Court as a case. The respondent judge then has the opportunity to file written exceptions to the Commission's report and to appear in person and by counsel before the Supreme Court which may adopt, amend, or reject the recommendations of the Commission.

Two flow charts appended to this report trace the progress of a complaint before the Commission and through Supreme Court proceedings.

COMMISSION ACTIVITY IN 1991

At the close of 1991, there were 489 judicial positions subject to the Commission's jurisdiction.

Justices of the Supreme Court	7
Judges of the Court of Appeals	10
Judges of the District Courts	149
District Magistrate Judges	69
Municipal Judges	254

Others are subject to the Code of Judicial Conduct on an ad hoc basis. The compliance statement appended to the Code provides: "Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, or magistrate, is a judge for the purpose of this Code." 1991 Kan. Ct. R. Annot. 339. No attempt has been made in this report to enumerate those individuals.

In 1991, the Commission received 186 inquiries by telephone, by letter, or by personal visit to the Clerk's Office. Of those individuals, 122 were mailed copies of the Supreme Court Rules Relating to Judicial Conduct, a complaint form, and a brochure describing the work of the Commission. Of those 122, 21 responded by filing a complaint. An additional 65 complaints were filed for a total of 86 complaints filed in 1991.

The Commission disposed of 65 undocketed complaints in 1991 and 26 docketed complaints. For a discussion of the distinction between undocketed and docketed complaints, see this report at pages 10 - 11.

COMMISSION ON JUDICIAL QUALIFICATIONS

January 1, 1991 - December 31, 1991

TOTAL NUMBER OF INQUIRIES	186
RULES AND COMPLAINT FORMS MAILED	122
NUMBER OF COMPLAINTS FILED	86
NUMBER OF COMPLAINTS DOCKETED	21
DOCKETED COMPLAINTS PENDING ON JANUARY 1, 1991	5

DISPOSITION OF DOCKETED COMPLAINTS

Dismissed After Investigation	11
Dismissed After Investigation With Caution	3
Letter of Admonishment Issued	6
Cease and Desist Order Issued	2
Pending	4
	26

POSITION OF JUDGE AGAINST WHOM COMPLAINT WAS FILED

District Judge	21	
Municipal Judge	3	(two are law trained)
Judge Pro Tem	2	(law trained)
	26	

Substance of Complaints

1991

Abuse of Power	3
Administrative Inefficiency	5
Conflict of Interest	1
Delay in Making Decision	9
Denied Hearing/Denied Fair Hearing	7
Disagreement With Ruling	34
Ex Parte Communication	3
Failure to Enforce Order	1
Failure to State a Complaint, Appealable Matter, or Legal Issue	14
Improper Election Campaign Conduct	1
Improper Influence	2
Inappropriate Personal Comment	6
Injudicious Temperament	9
Intemperance	2
Personnel Matter	1
Prejudice/Bias	10
Sexual Harassment	1
Sleeping While on Bench	1

Individual complaints may contain more than one allegation of misconduct.

EXAMPLES OF CONDUCT FOUND TO BE PROPER OR OUTSIDE THE COMMISSION'S JURISDICTION

A woman complained that every time she tried to interject a comment in her small claims matter, the judge would stop her. The Commission recognized the judge must exercise discretion in this regard to control the proceedings.

A judge proceeded with a divorce hearing in defendant's absence. The judge explained he granted only the divorce; all other matters were continued.

A judge refused to grant a continuance due to the late request for continuance.

A judge exercised his discretion in the revocation of bond.

A judge denied a request for a jury trial.

A judge permitted new evidence to be admitted in a case.

A judge's order was not carried out one year after issuance.

A judge consistently ruled in favor of one party in a divorce suit.

EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

A judge was cautioned after telling a litigant he had received his money's worth (referring to $55.00 filing fee).

A judge was admonished after lending the prestige of his office to a relative's business venture.

A judge was admonished regarding a year's delay in a dog barking case. The judge acknowledged the delay. He was aware that any decision would cause further strife in the neighborhood and, therefore, spent considerable time examining potential alternatives.

A judge was admonished concerning his rude remarks to a litigant in a small claims matter. The judge admitted he was angry with the defendant for failure to make an effort to settle the dispute outside court.

A judge was admonished concerning delay. The Commission found the delay unwarranted; however, the Commission recognized the judge was taking steps to remain current. The Commission was also aware of the judge's numerous personal difficulties.

A judge was admonished for the use of misleading campaign advertisement during the time he was a judicial candidate. The advertisement gave the impression the candidate was already a judge.

A judge was admonished for excessive drinking at a business meeting.

A judge was admonished concerning ex parte communication.

A judge was reprimanded for publicly endorsing a candidate for office.

A judge was cautioned in a matter in which innocent remarks were misconstrued as ex parte communication.

APPENDICES

REPORTED JUDICIAL DISCIPLINARY CASES

In re Rome, 218 Kan. 198, 542 P.2d 676 (1975).

In a criminal proceeding, a magistrate judge issued a memorandum decision which held the defendant out to public ridicule or scorn. The decision was, incidentally, issued in poetic form.

The Supreme Court found the conduct violated Canon 3 A. (3) which requires a judge to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity." The court ordered public censure.

In re Baker, 218 Kan. 209, 542 P.2d 701 (1975).

The Commission on Judicial Qualifications found six violations of Canon 7 arising out of advertising materials used in a campaign for judicial office.

The Supreme Court found no violation as to five charges, holding the activities to come within the pledge of faithful performance of the duties of judicial office. The court found the health, work habits, experience, and ability of the candidates to be matters of legitimate concern to the electorate. As to the sixth charge, the court found that a campaign statement by a candidate for judicial office that an incumbent judge is entitled to a substantial pension if defeated, when the judge is not in fact eligible for any pension, violates the prohibition of Canon 7 B. (1) (c) against misrepresentation of facts. The court imposed the discipline of public censure.

In re Sortor, 220 Kan. 177, 551 P.2d 1255 (1976).

A magistrate judge was found by the Commission to have been rude and discourteous to lawyers and litigants and, on occasion, to have terminated proceedings without granting interested parties the right to be heard.

The Supreme Court found violations of Canons 3 A. (3) and (4) and imposed public censure.

In re Dwyer, 223 Kan. 72, 572 P.2d 898 (1977).

A judge of the Court of Common Pleas of Sedgwick County was found to lack patience, courtesy, dignity, and the appearance of fairness and objectivity. A course of conduct was established which demonstrated an intemperate, undignified, and discourteous attitude toward and treatment of litigants and members of the public who came before the judge.

The Supreme Court found the judge had violated Canons 3 A. (2), (3), and (4). The court imposed public censure.

In re Miller, 223 Kan. 130, 572 P.2d 896 (1977).

A judge of the district court asked a judge of the county court to dismiss a ticket of an acquaintance of the judge. When the judge of the county court declined, the judge of the district court inquired whether the fine could be reduced. The judge of the county court again declined; whereupon, the judge of the district court remarked, "Well, I guess that is one favor I don't owe you."

The Supreme Court found violations of Canons 2 A. and 2 B. which exhort a judge to avoid impropriety and the appearance of impropriety. The court ordered public censure.

In re Hammond, 224 Kan. 745, 585 P.2d 1066 (1978).

A judge of the district court was found to have demanded sexual favors of female employees as a condition of employment.

The Supreme Court found violations of Canons 1, 2 A. and 3 B. (4). Noting that the judge's retirement due to disability made suspension from duty or removal from office unnecessary, the court ordered public censure.

In re Rome, 229 Kan. 195, 623 P.2d 1307 (1981).

An associate district judge was found to lack judicial temperament as evidenced by his actions in the following regard. The judge acted in a manner that did not promote public confidence in the integrity and impartiality of the judiciary and allowed his personal views or appeared to allow his personal views on the political issue of selection of judges to influence his judicial conduct or judgment. The judge, in writing a memorandum decision, purposefully

attempted to be critical of actions of the county attorney and of a fellow judge. The judge purposefully made allegations of fact and stated as conclusions factual matters that were at the time he made his statements being contested in separate criminal cases. Subsequent to making such statements, the judge purposefully and intentionally attempted to get them publicized by sending copies to the news media.

The Supreme Court found violations of Canons 1, 2, 3 A. (1), 3 A. (3), and 3 A. (6). The judge was ordered removed from office.

In re Woodworth, 237 Kan. 884, 703 P.2d 844 (1985).

A judge of the district court was convicted of violating a statute which makes it unlawful to have in one's possession any package of alcoholic liquor without having thereon the Kansas tax stamps required by law.

The Supreme Court found violations of Canons 1 and 2 A. relating to the integrity and independence of the judiciary and the avoidance of impropriety and the appearance of impropriety. The court ordered public censure.

In re Levans, 242 Kan. 148, 744 P.2d 800 (1987).

A district magistrate judge removed eight railroad ties belonging to a railway company without written permission or verification of purported oral authority. The judge did not fully cooperate during investigation of the incident.

The Supreme Court found violations of Canons 1 and 2. The court ordered public censure.

In re Yandell, 244 Kan. 709, 772 P.2d 807 (1989).

A judge of the district court violated the law by leaving the scene of a non-injury accident and in so doing also violated the terms of a previous cease and desist order issued by the Commission on Judicial Qualifications. Numerous other violations arose out of the judge's conduct in various financial transactions and his failure to recuse himself in contested cases involving his creditors.

The Supreme Court found violations of Canons 1, 2 A., 3 C., 5 C. (1), 5 C. (3), and 5 C. (4) (b). The court ordered removal from office.

In re Long, 244 Kan. 719, 772 P.2d 814 (1989).

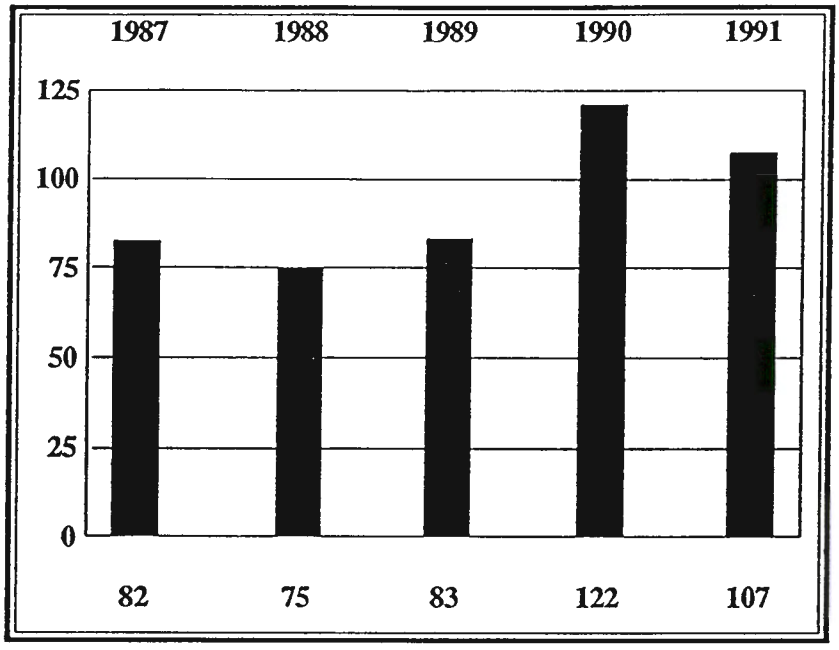
A judge of the district court was found to have failed to respect and comply with the law, carry out her adjudicative responsibility of promptly disposing of the business of the court, and diligently discharge her administrative responsibilities and maintain professional competence in judicial administration.

The Supreme Court found violations of Canons 2 A., 3 A. (5), and 3 B. (1). The court ordered public censure.

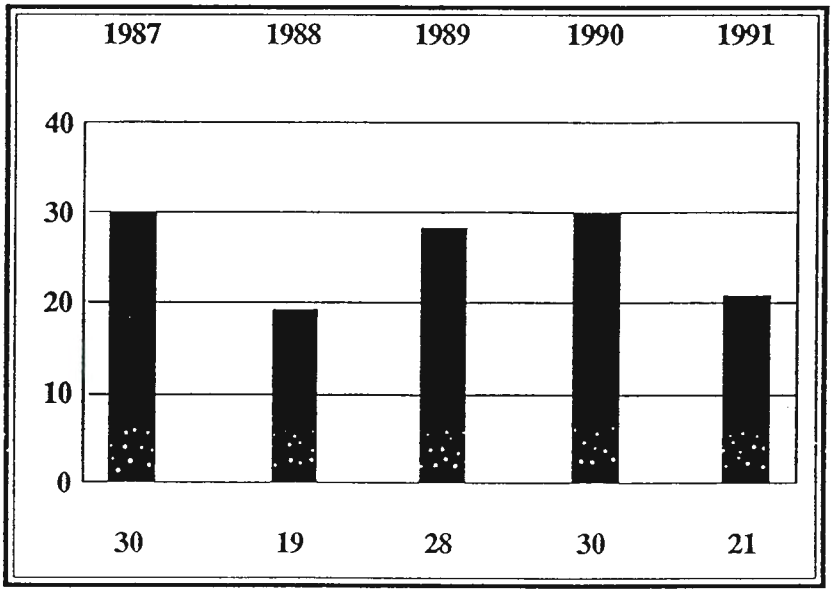
Appendix B

Five-Year Summary of Complaints Received and Docketed

COMPLAINTS RECEIVED



COMPLAINTS DOCKETED



Appendix C

Commission on Judicial Qualifications
Statistical Summaries 1987 - 1991

	1987	1988	1989	1990	1991
Total Number of Inquiries	166	150	163	180	186
Rules and Complaint Forms mailed	52	74	112	86	122
Number of Complaints Filed	52	55	55	92	86
Number of Complaints Docketed	30	19	28	30	21
Docketed Complaints Pending at beginning of year	3	8	5	8	5
Disposition of Complaint					
Dismissed, no violation found	5	1	2	0	0
Dismissed after investigation	13	17	13	26	11
Dismissed after investigation with caution	0	0	6	2	3
Letter of admonishment issued	4	1	1	5	6
Cease and Desist issued	0	2	1	2	2
Notice of Formal Proceedings filed	1	1	0	0	0
Judge Resigned	1	0	0	0	0
Dismissed for lack of jurisdiction	1	0	0	0	0
Dismissed for lack of information	1	0	0	0	0
Complaints Pending year end	8	5	8	5	4
Type of Judge Complained Against					
District Judge	18	18	24	25	21
District Magistrate Judge	8	7	11	1	0
Municipal Judge	2	1	1	7	3
Judge Pro Tempore	2	1	1	4	2

Appendix D

Sample Complaint Form

Kansas Commission on Judicial Qualifications

Room 374, Kansas Judicial Center 301 West Tenth Street Topeka, KS 66612 913-296-3229

Complaint against a judge

Person making the complaint

Address

City, State, Zip Code Phone number

I would like to file a complaint against: Name of Judge:

Type of Judge (if known) County or City

Details and specifics of complaint: **Please state all specific facts and circumstances which you believe constitute judicial misconduct or disability. Include any details, names, dates, places, addresses, and telephone numbers which will assist the commission in its evaluation and investigation of this complaint. Also include any documents, letters or other materials related to the complaint. Identify the names and addresses of any witnesses. Keep a copy of everything you submit for your records.**

Continue on reverse

(If additional space is required, use additional pages as needed and attach them to this page.)

I certify that the allegations and statements of fact set forth above are true and correct to the best of my knowledge, information and belief.

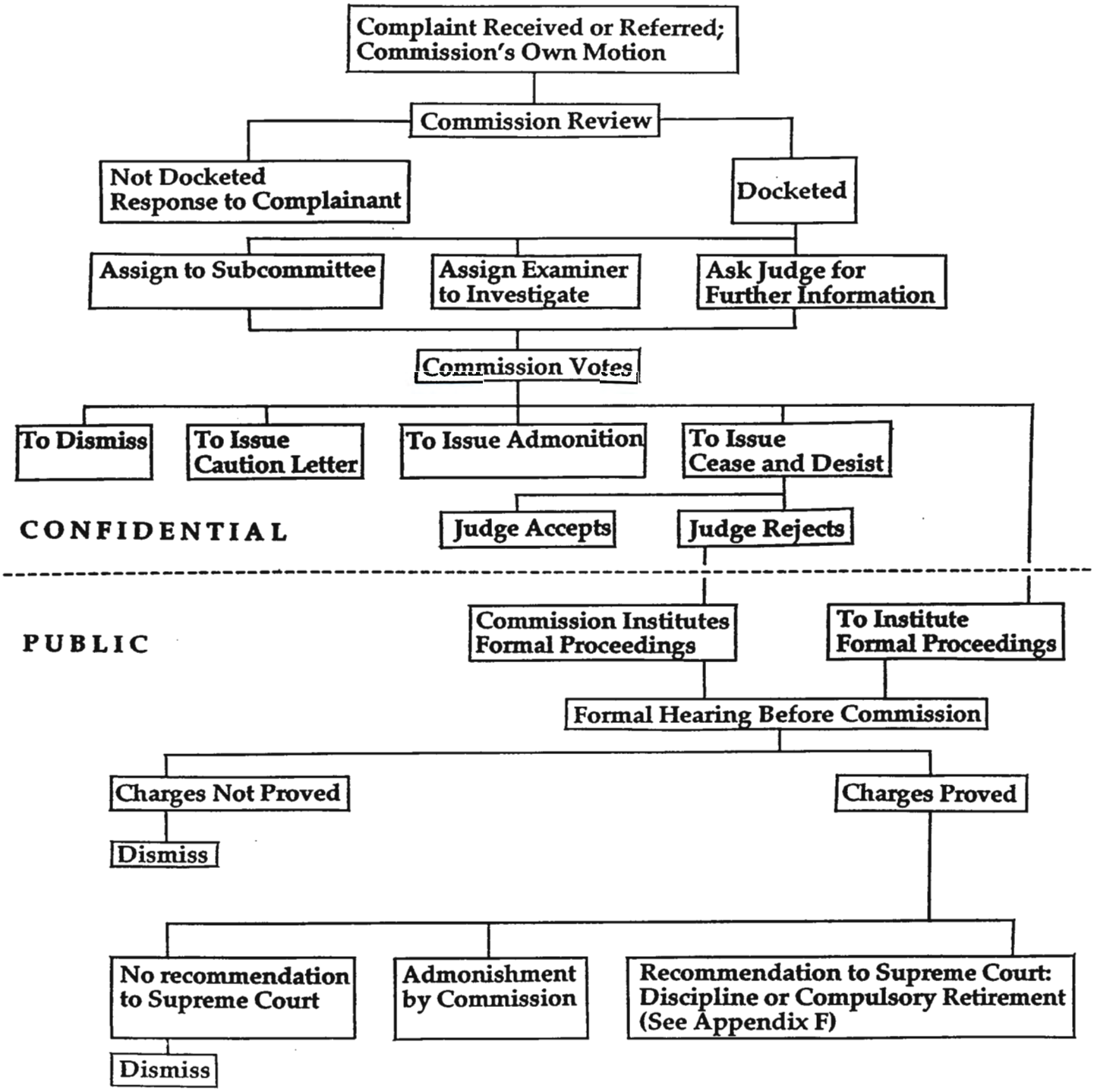
Date

Complainant's Signature

Appendix E

COMMISSION PROCEDURES

RECEIPT OF COMPLAINT THROUGH FORMAL PROCEEDINGS



PROCEEDINGS BEFORE THE SUPREME COURT

REVIEW OF COMMISSION FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS