

ANNUAL REPORT OF THE COMMISSION ON JUDICIAL QUALIFICATIONS

(January 1, 1991)

The Kansas Commission on Judicial Qualifications began its 18th year of operation on January 1, 1991. The Commission was established by the Supreme Court of the State of Kansas on January 1, 1974.

The Commission was created by the court under the authority granted by Article III, Section 15 of the Constitution and in the exercise of the inherent powers of the Supreme Court.

The Commission 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.

Since its beginning, the Commission has followed a schedule of meeting on alternate months, usually the first Friday of the month, in the meeting room of the Clerk of the Appellate Court's office in the Kansas Judicial Center in Topeka.

How the Commission Operates

The Commission is charged with conducting an investigation when it has received 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. An investigation also may be made on the Commission's own motion.

Any person may file a complaint with the Commission. Most complaints are received in the clerk's office by mail. In the recent past, there also has been an increase in the number of persons visiting the clerk's office, or calling the office, to seek information about filing a complaint. The Commission also has a reciprocal arrangement with the disciplinary administrator to cross-refer complaints.

Frequently, the complaint received, either by mail or in person, is of a general nature. The Commission's secretary generally sends (or gives) a copy of the rules relating to judicial conduct and requests that the person again communicate with the Commission setting out specifically what the person believes the judge's violations of the code to be.

From the beginning, the Commission has felt one of its primary responsibilities has been to educate the public as to the rules of judicial conduct and to "lend an ear" to any person who believes a judge has acted improperly. After this initial correspondence or visit, complainants will reply with specific allegations of violations of the Code of Judicial Conduct. Many times, however, the chance to voice a grievance through a personal visit or letter is sufficient -- and the Commission never receives a complaint listing specifics.

When the Commission does receive a complaint that indicates an alleged violation on the part of a judge, this complaint is assigned by the chair to a subcommittee of three members. The office of the Commission docketed the complaint and mails copies of the complaint to all members, with the assignment of designation as to the subcommittee.

Frequently, the Commission also receives complaints relating to a matter not within the jurisdiction of the Commission. Also, frequently the complaint relates to dissatisfaction with a judicial decision involving a matter in which the complainant was a litigant or a relative of a litigant. Domestic relations cases -- divorce and child custody -- are a fertile source of complaints received by the Commission.

Another common misconception on the part of the public is that the Commission is an appellate court. Consequently, the Commission generally dismisses complaints that relate to matters on appeal or to matters in which the exercise of judicial discretion is involved.

Persons who have been convicted in a criminal case constitute an additional grouping of complaints which relate to matters of evidence at the time of trial or are procedural matters during trial, the sentencing phase of the proceedings, or the post-sentencing phase. Complaints that are properly the subject of an appeal to an appellate court, matters involving dissatisfaction with a jury verdict, or dissatisfaction with defense counsel are dismissed by the Commission as not stating violation of the Code of Judicial Conduct.

At the Commission's meetings, if the Commission-as-a-whole feels that an investigation is in order, the docketed complaint is continued pending such investigation.

Investigation may consist of a request to the judge involved to furnish a response. It also may involve obtaining pertinent court records.

After the judge's response is received -- and often the judge includes the court's records with the response -- the complaint may be dismissed by the Commission as not stating a violation

of the Code of Judicial Conduct, after investigation. When a complaint is dismissed for failure to state a violation, the respondent judge and the complainant are notified. The resignation of a judge during a pending investigation generally renders a further investigation moot.

If additional investigation is involved, the examiner is instructed to conduct such an investigation and report back to the Commission. The examiner is not a full-time staff employee. The examiner is a member of the Kansas Bar who is retained by the Commission and paid for the services performed for the Commission.

The Commission also has the authority to issue a cease and desist order when there is no factual dispute as to an alleged violation of the code. The complainant and any other interested person as determined by the Commission is informed of the outcome of any cease and desist order.

During the investigation stage prior to the filing of the notice of formal proceedings, the rules require that a judge be contacted and advised informally that an investigation is being made. The judge then has the opportunity to present information to the examiner.

If the Commission feels that the matter should go to formal proceedings, after the investigation has been completed, 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 (and during the investigative phase prior to the filing of the notice of formal proceedings). 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 examiner for the Commission presents the case in support of the charges in the notice of formal proceedings. All proceedings are recorded verbatim. 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.

The judge has the right of appealing the findings and recommendations of the Commission to the Kansas Supreme Court. All discipline except admonishment and the cease and desist order

must be imposed by the Supreme Court. The action of the Commission constitutes recommendations only. The recommendations are either adopted, amended, or rejected by the Supreme Court.

The Commission is required in all proceedings resulting in a recommendation for discipline or compulsory retirement to make written findings of fact, conclusions of law, and recommendations. These are filed and docketed by the Clerk of the Supreme Court as a case. The matter then is in the hands of the Supreme Court and proceeds as a docketed Supreme Court case captioned "Original Proceedings Relating to Judicial Conduct." Rules of appellate procedure apply to proceedings in the Supreme Court for a review of the Commission's recommendation unless express provision is made to the contrary.

A chart showing the flow of the Commission's work is included in this report.

THE COMMISSION'S ACTIVITY

Eleven complaints have resulted in recommendations from the Commission to the Supreme Court for discipline. They are found in the Kansas Reports under the following citations:

In re Rome, 218 Kan. 198, 542 P.2d 676 (1975)
 In re Baker, 218 Kan. 209, 542 P.2d 701 (1975)
 In re Sortor, 220 Kan. 177, 551 P.2d 1255 (1976)
 In re Dwyer, 223 Kan. 72, 572 P.2d 898 (1977)
 In re Miller, 223 Kan. 130, 572 P.2d 896 (1977)
 In re Hammond, 224 Kan. 745, 585 P.2d 1066 (1978)
 In re Rome, 229 Kan. 195, 623 P.2d 1307 (1981)
 In re Woodworth, 237 Kan. 884, 703 P.2d 844 (1985)
 In re Levans, 242 Kan. 148, 744 P.2d 800 (1987)
 In re Yandell, 244 Kan. 709, 772 P.2d 807 (1989)
 In re Long, 244 Kan. 719, 772 P.2d 814 (1989)

The time interval involved from the receipt of a complaint until the issuance of the Commission's opinion, recommendations, findings of fact, and conclusions of law for each of the above eleven cases which went to formal proceedings averaged 10.25 months with the second Rome matter taking longer (December 1978 to June 1980). In re Woodworth, respondent waived notice of formal proceedings and his right to a hearing before the Commission.

There have been 15 cases in which there was no Supreme Court opinion but in which there was extensive investigation resulting in private censure or resignation of a judge. This group of cases averaged 6.5 months from the time of the receipt of the complaint until the disposition of the matter.

The substantial majority of complaints involved a commission handling time interval averaging 3 months per complaint. The time interval is determined from the date the complaint is first received until the matter is finally resolved.

Of the total number of complaints docketed, 224 have been dismissed as not stating a violation of the Code of Judicial Conduct after investigation by the Commission. Another 23 complaints were determined to be moot due to the resignation of a respondent judge during the investigation period. It should be noted that on occasion more than one complaint was addressed against an individual judge. Each complaint received a separate docket number.

In twenty-eight matters "cease and desist" orders were issued by the Commission and accepted by the respondent judge. In the Commission's first three years of existence, two private censures also were issued and accepted.

In the 11 cases which have resulted in sanctions recommended by the Commission, the Supreme Court has imposed a form of discipline provided by the Code. Public censure has been the result in nine instances and removal in two instances. One complaint involved formal proceedings by the Commission which did not result in a Commission finding of a violation of the Code of Judicial Conduct.

A statistical analysis of the activities of the Commission is attached as a part of this report.

COMMISSION MEMBERSHIP

The Commission has had 18 members serve with distinction during the sixteen years. Three members have served continuously since the Commission began its work on January 1, 1974. They are Georgia Neese Gray and Kenneth C. Bronson, both of Topeka, the two non-lawyer members; and Charles S. Arthur, Manhattan, one of the three lawyer members. Fred N. Six, Lawrence, served as a lawyer-member from January 1, 1974 until September 1, 1987, when he was sworn in as a Court of Appeals judge. One year later he was appointed to the Supreme Court.

Others who presently serve on the Commission are Mikel L. Stout, Wichita and John J. Gardner, Olathe, lawyer members; James J. Noone, Wichita, retired judge; Steven P. Flood, Hays and James W. Paddock, Lawrence, district court judges and J. Patrick Brazil, Topeka Court of Appeals Judge.

In addition to Justice Six, others who have formerly served on the Commission are L.A. McNalley, Salina and O.Q. Claflin, III, Kansas City, retired judges; Bert Vance, Garden City; the late Harold R. Riggs, Olathe; Brooks Hinkle, Paola; M.V. Hoobler, Salina and Lewis C. Smith, who served while active judges; and the late Robert H. Nelson, Wichita and Edward F. Arn, Wichita, lawyer-members. Judge Noone also served on the Commission from January 1974 to July 1975.

Judge McNalley chaired the Commission during the first four years of its existence. He was followed by Fred Six who

chaired the body for three years; and Mr. Bronson, who held the position for two years. Mr. Arthur chaired the Commission during 1983 and 1984; Judge Smith during 1985; Judge Claflin during 1986 and 1987 and Judge Flood during 1988 - 1990.

Lewis C. Carter has been the Commission's secretary since its beginning. Carol Deghand has been office manager for the past 12 years.

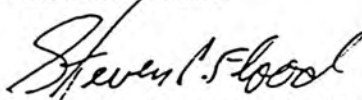
S U M M A R Y

During the 17 years that the Commission has been in existence, experience has indicated that (1) an informal investigation, (2) correspondence in the form of a letter of inquiry from the Commission to the judge, or (3) the utilization of the cease and desist order usually is sufficient to eliminate the behavior complained of without requiring a formal hearing and subsequent review by the Supreme Court.

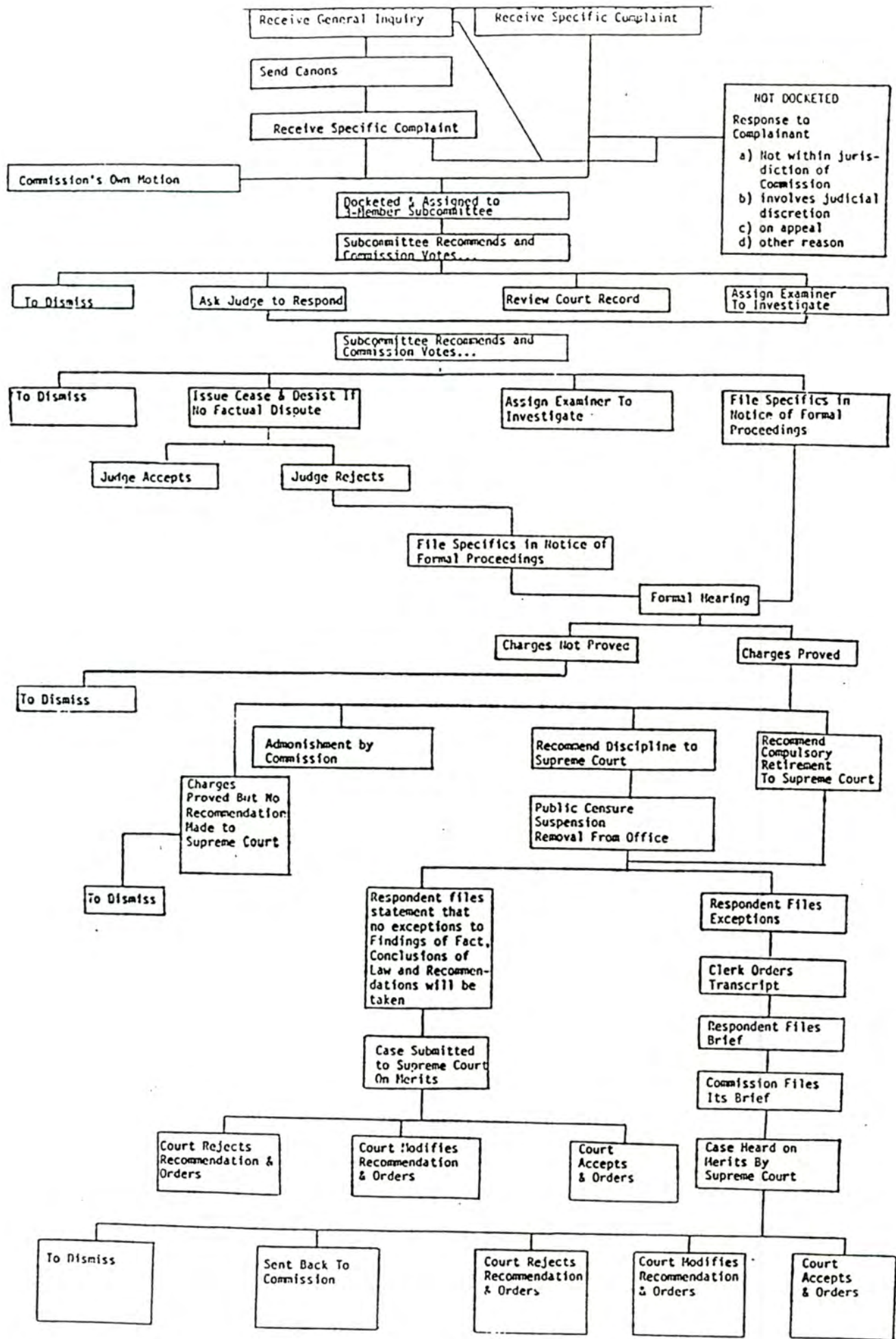
The Commission's experience also indicates that the judges in the State of Kansas have cooperated with the Commission whenever called upon to do so.

Respectfully submitted,

COMMISSION ON JUDICIAL
QUALIFICATIONS



Steven P. Flood, Chairman



COMMISSION ON JUDICIAL QUALIFICATIONS

January 1, 1990 - December 31, 1990

NUMBER OF COMPLAINTS DOCKETED	30
COMPLAINTS PENDING ON JANUARY 1, 1990	8
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DISPOSITION OF COMPLAINTS

Dismissed After Investigation	26
Dismissed After Investigation With Caution	2
Letter of Admonishment	5
Cease and Desist Order Issued	2
Pending	5
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	40

POSITION OF JUDGE AGAINST WHOM
COMPLAINT WAS FILED

District Judge	25
Magistrate Judge	1 (law trained)
Municipal Judge	7 (6 are law trained)
Judge Pro Tem	4 (law trained)
Candidate	1 (law trained)

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In addition to the number of complaints docketed during 1990, 150 inquiries were processed. [Commission rules were forwarded in response to 86 requests. Twelve responses were subsequently received but not docketed.]

Note: Some complaints involve more than one judge.

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Total
Complaints.....	26	36	38	42	57	64	90	91	142	128	120	149	173	166	150	163	180	
Considered but not docketed...	-	-	-	7	15	40	73	70	116	110	102	131	156	136	131	135	150	
Docketed.....	26	36	38	35	42	24	17	21	26	18	18	18	17	30	19	28	30	
Pending.....	-	5	10	8	10	11	9	4	65	35	35	55	35	35	65	5	8	
TOTAL (Docketed & Pending)	26	41	48	43	52	35	26	25	32	21	21	23	20	33	27	33	38	
Dismissed as not stating a violation	1	22	17	18	19	9	4	3	9	1	5	0	1	5	1	2	0	117
Dismissed after investigation	9	2	10	7	14	12	11	9	17	13*	4	12	16	17±	18±	20	33	224
Dismissed as moot	1	0	5	4	2	3	0	3	0	1	0	3	0	0	0	2	0	24
Dismissed after consultation with judge	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Dismissed as not within jurisdiction	7	0	0	2	0	0	0	0	0	0	0	0	0	1	0	0	0	10
Dismissed at request of complainant	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2
Dismissed for lack of specifics	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	2
Dismissed during litigation	0	0	0	0	0	0	0	0	1	0	0	1	1	0	0	0	0	3
Dismissed by Supreme Court	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Cease & Desist issued and accepted	0	1	2	2	3	2	3	2	0	3	3	2	0	0	2	1	2	28
Private Censure	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Public Censure	0	2	3*	0	1	0	0	0	0	0	0	1	0	1*	1	0	0	9
Removal recommended to Supreme Court	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	2
Charges in Formal Proceedings Not Proven	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Pending	5	10	8	10	11	9	4	6	4	3	8	5	4	8	5	8	5	

These totals may reflect 2 or more complaints against the same judge or a single complaint against more than one judge. In some cases a letter of admonition was sent to the judge when the matter was dismissed.

* corrections

\$ Additionally, there was a Notice of Formal Proceedings filed

+ One or more of these received a letter of admonition

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Total
District Judge....	18	19	17	22	30	15	9	11	14	11	11	9	10	18	19*	24	26*	283
District Magistrate	4	5	7	2	5	4	2	7	5	5	7*	5*	3	8	7	11	1	88
Municipal Judge....	1	5	5	5	3	3	5	3	4	2	2	4	1	2	1	1	7	54
Pro., Jvnl, County....	4	11	18	9	1	0	0	0	0	0	0	0	0	0	0	0	0	43
Common Pleas....	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Associate District....	0	0	2	5	15	13	6	8	8	5	3	6	8	***	0	0	0	79
Pro Tem Judge	0	0	3	0	0	0	0	0	1	1	1	1	1	2	1	1	4	16
Former Justice....	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Court of Appeals	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Supreme Court	0	0	0	0	0	0	7	0	0	0	0	0	0	0	0	0	0	7
Total **	27	41	53	44	54	35	30	29	32	24	24	25	23	30	28	37	38	574

* Included a candidate for the position.

** These totals may reflect one or more complaints against the same judge or a single complaint against more than one judge.

*** The title of associate district judge was abolished effective January 1987. Associate district judges now have the title of district judge.