

STATE OF KANSAS



COMMISSION ON JUDICIAL QUALIFICATIONS

1997 ANNUAL REPORT

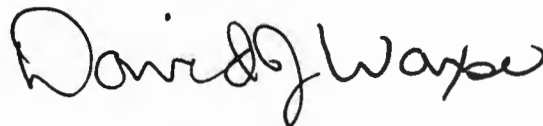
FROM THE CHAIR

Kansas Supreme Court Rule 601A, the new Code of Judicial Conduct under which we have functioned for nearly three years, has served the Commission and the judiciary well, providing clearer standards for our guidance. Some areas, such as the appropriate limits of political campaign activity and the determination of what conduct is considered sexual harassment, continue to defy precise definition. In these and other difficult areas of interpretation and enforcement, the Commission continues to work to define the appropriate standards, bearing in mind our responsibility to both the public and the judiciary.

As the Preamble to the Code of Judicial Conduct states:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us.

Only by maintaining the standards of excellence which characterize the Kansas Judiciary will the judicial branch be able to remain independent. On behalf of the Commission, thank you for your continued cooperation and concern as we all work toward maintaining the standards of excellence. The Commission welcomes suggestions and comments.



David J. Waxse, Chair
Kansas Commission on Judicial Qualifications

April 1998

1997 ANNUAL REPORT
OF THE
KANSAS COMMISSION ON JUDICIAL QUALIFICATIONS

COMMISSION MEMBERS:

Term Expires

David J. Waxse - Chair	2001
Judge Kathryn Carter - Vice-Chair	2001
Chief Judge J. Patrick Brazil	1999
Ray Call	1998
Robert A. Creighton	1998
Judge Theodore B. Ice	1998
Judge James W. Paddock	2000
Carol Sader	2000
Mikel L. Stout	2000

Supreme Court Liaison

Justice Fred N. Six

Commission Staff

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

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COMMISSION MEMBERS



(Seated l. to r.) Mikel L. Stout, Carol Sader, Judge Kathryn Carter, Ray Call

(Standing l. to r.) Robert A. Creighton, Judge Theodore B. Ice, David J. Waxse,
Judge James W. Paddock, Chief Judge J. Patrick Brazil

BIOGRAPHIES

MEMBERS WHO SERVED DURING 1997

The Honorable J. Patrick Brazil was appointed to the Kansas Court of Appeals in December 1985, and became Chief Judge June 1, 1995. He was a state district judge from 1972 until the appellate court appointment and a municipal judge at Eureka, Kansas, from 1970 to 1972. Judge Brazil maintained a general law practice in Pratt and later Eureka, until his appointment to the judiciary in 1972. He attended Chanute Junior College (now Neosho County Community College) and received a B.S.B.A. from Rockhurst College. He received a J.D. from Washburn University School of Law in 1962. Judge Brazil is a former member of the Kansas Continuing Legal Education Commission and a past president of the Kansas District Judges' Association. He currently serves on the Kansas Judicial Council. He has been a member of the Commission on Judicial Qualifications since 1984, chairing the Commission from February 1991 to February 1994.

Ray Call, a lay member of the Commission, retired December 31, 1995, as Executive Editor and editorial writer for the Emporia Gazette in Emporia, Kansas. He attended Coffeyville Junior College and Emporia State University and taught elementary school briefly before embarking on a career in journalism. Call is a member of the Vestry at St. Andrew's Episcopal Church. He is involved in the Chamber of Commerce centennial project and a board member for Kids Voting Kansas in Lyon County. He also serves as board member for the restoration project of the Granada Theater in Emporia. Call has been a member of the Commission since October 1993.

The Honorable Kathryn Carter, a district magistrate judge from Concordia, Kansas, received her B.A. from the University of Kansas in 1973 and her Juris Doctorate in 1986. She was a solo law practitioner in the Jamestown-Concordia area in 1986-87 before she became a district magistrate judge in 1987. Judge Carter is noted for her work assisting children and was a founding member of Cloud County Planning Council, a multi-agency coalition formed to address needs of at-risk children. She is also a founding member of the Association for Academic Enrichment, a parent association supplementing primary school education, and an advisory board member of Kansas Action for Children. Judge Carter was appointed to the District Magistrate Judges' Certification and Education Committee by the Kansas Supreme Court in 1994. She became a member of the Commission in January 1993.

Robert A. Creighton, lawyer member of the Commission, practices in Atwood, Kansas, with the firm of Brown, Creighton and Peckham. He is also president of Flagler Bankshares, Inc., owner of The First National Bank of Flagler, Colorado. Creighton received his B.A. from the University of Kansas in 1956 and his law degree in 1960. He served as Rawlins County Attorney from 1961-1967 and as Atwood City Mayor from 1984-1991. Board appointments include the Kansas Board of Regents (Chairman 1990-1991), Kansas Hospital Closure Commission (Chairman), League of Kansas Municipalities Governing Body, Atwood Second Century Development Fund, Rawlins County Hospital Board (past Chairman), Atwood City Library Board (present Chairman), and the Atwood Jayhawk Theater Board. Civic activities include Greater Northwest Kansas, Inc., (founder and past President), Mid American Masters Association (founder and past President), Atwood Rotary (past President), Atwood Chamber of Commerce (past President), and KU Alumni Association Advisory Board. He was appointed to the Commission on Judicial Qualifications in July 1994.

The Honorable Theodore Branine Ice, a district judge from Newton, Kansas, received his B.A. from the University of Kansas in 1956 and his Juris Doctorate in 1961, following service in the United States Navy. He practiced law in Newton for twenty-five years in the firm of Branine, Ice, Turner & Ice. During that time, he was president of the Newton Chamber of Commerce and served on several community boards. He was appointed district judge in 1987 and has also served as an assigned panel member of the Kansas Court of Appeals. Judge Ice was the organizing judge for the Harvey County CASA (Court-appointed Special Advocate) and Multi-Disciplinary Team. He served as president of the Harvey County Bar Association and also served four years on the Board of Editors of the Journal of the Kansas Bar Association. Judge Ice is a member of the American Bar Association, the Kansas Bar Association, the Harvey County Bar Association, Phi Delta Theta Social Fraternity, Omicron Delta Kappa Honorary Society, and Phi Delta Phi Legal Fraternity. He has served on the Commission on Judicial Qualifications since July 1994.

The Honorable James W. Paddock graduated from the University of Kansas in 1951 and from the University of Kansas School of Law in 1956, opening a private law practice in Lawrence. During his years in private practice, he served as an assistant Douglas County attorney, municipal judge, and city prosecutor. He was appointed district judge in Douglas County in 1972 and served as administrative judge for the Seventh Judicial District from 1978 to 1990. He retired from the bench in 1994. He taught trial practice at KU School of Law and also taught at KU business school. Judge Paddock has served on the Lawrence Unified School District No. 497 School Board and as president of the Board, the Kansas State High School Activities Association, and as president of the Kansas District Judges' Association. He is a trustee of the charitable Raymond F. and Ethel Rice Foundation and has been a member of this Commission since February 1989.

Carol Sader, a lay member of the Commission from Prairie Village, received her B.A. from Barnard College in 1957. She also attended Chicago-Kent College of Law and the University of Cincinnati College of Law. Ms. Sader taught school and served as a legal editor before running for elective office. She served as a Kansas State Representative for the 22nd Legislative District from 1987-1994 and ran for Lieutenant Governor of Kansas in 1994. During her legislative tenure, she served as chair and vice-chair of several committees. She currently serves on the Kansas Insurance Commissioner's Advisory Committee on Health Care. Ms. Sader's current community service includes: The Mainstream Coalition (President), Kansas Advocates for Better Care (Vice-President), Coalition for Positive Family Relationships Board, Johnson County Arts and Humanities Council Advisory Board, League of Women Voters, Health Partnership of Johnson County Advisory Council, and the Johnson County Community College Foundation Board. Ms. Sader's prior public and community service include serving as an elected trustee and Chair of the Board of Trustees of Johnson County Community College and President of the Johnson County League of Women Voters. Among her many awards are a distinguished public service award from the United Community Services of Johnson County (1993), HALLPAC Kansas Public Service Award (1993), Who's Who in American Women (1991-1998), and Who's Who In America (1994-1998). Ms. Sader was appointed a member of the Commission in June 1995.

Mikel L. Stout, lawyer member of the Commission, is in private practice with Foulston & Siefkin L.L.P. in Wichita. He received his B.S. from Kansas State University in 1958 and his LL.B., with distinction, from the University of Kansas in 1961. Stout was a member of the Order of the Coif and associate editor of the *University of Kansas Law Review*. His professional activities include the American College of Trial Lawyers; Kansas Association of Defense Counsel (president 1983-84); Wichita Bar Association (president 1987-88); Kansas Bar Foundation (president 1991-93); Civil Justice Reform Act Advisory Committee for the United States District Court for the District of Kansas (co-chair 1991-1995); and member of the American Bar Association. In community activities, Stout was president of Wichita Festival, Inc. 1978-79, and captain of the Wichita Wagonmasters 1982-83. He has been a member of the Commission since January 1984.

David J. Waxse, lawyer member of the Commission, practices in Overland Park, Kansas, with the firm of Shook, Hardy & Bacon L.L.P. He received a B.A. from the University of Kansas in 1967 and a Juris Doctorate from Columbia University in 1971. He served as Municipal Judge of the City of Shawnee from 1973 - 1980. Waxse, in his career, has lectured on employment law and other topics at the University of Kansas, the University of Missouri at Kansas City, Washburn Law School, the Kansas Bar Association, the Kansas City Metropolitan Bar Association, National Association of College and University Attorneys, and Council on Education in Management. He is a co-author of *Kansas Employment Law* (1985), *Litigating Employment Law Cases* (1987), and *Kansas Employment Law Handbook* (1991). Waxse is President-elect and an elected member of the Board of Governors of the Kansas Bar Association and a member of the American Bar Association, Johnson County Bar Association, Kansas City Metropolitan Bar Association, and American Employment Law Council. He also served as a member of the Civil Justice Reform Act Advisory Committee for the United States District Court for the District of Kansas. Waxse became a member of the Commission in October 1992.

SECRETARY TO THE COMMISSION

Carol Gilliam Green, by Supreme Court Rule, has served as Secretary to the Commission since her appointment as Clerk of the Kansas Appellate Courts in September 1991. Prior to that appointment she served as research attorney to Chief Justice Alfred G. Schroeder and as Director of the Central Research Staff for the Kansas Court of Appeals. Ms. Green received her J.D. degree from Washburn University School of Law, magna cum laude, in May 1981. She also holds a Master of Arts in English from the University of Missouri at Columbia. She was a member of the Kansas Continuing Legal Education Commission from its inception in 1985 until 1993, serving as chair from 1991-1993. She serves, by Supreme Court Rule, as Secretary to the Client Protection Fund Commission and by Supreme Court appointment as a member of the Board of Examiners of Court Reporters. She is past chair of both the Kansas Bar Association Public Information Committee and the Handbook Subcommittee of the CLE Committee. Ms. Green edited the second edition of the *Kansas Appellate Practice Handbook* and received a KBA Outstanding Service Award in 1995. She currently serves as secretary and on the Executive Committee of the National Conference of Appellate Court Clerks.

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.

Past members of the Commission who served with distinction include James J. Noone (Wichita), who served while an active judge and subsequently as a retired judge; 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), Lewis C. Smith (Olathe), and Steven P. Flood (Hays), who served while active judges; Robert H. Nelson (Wichita), Edward F. Arn (Wichita), John J. Gardner (Olathe), and Fred N. Six (Lawrence), and Charles S. Arthur (Manhattan), lawyer members; and Georgia Neese Gray (Topeka), Kenneth C. Bronson (Topeka), and Dr. Nancy Bramley Hiebert (Lawrence), non-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	1988-1991
Judge J. Patrick Brazil	1991-1994
Mikel L. Stout	1994-1997
David J. Waxse	1997-

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. 1997 Kan. Ct. R. Annot. 449-461.

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. *See* Kansas Court Personnel Rule 10.4(e).

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 but monthly meetings are scheduled if the agenda requires. 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; and evidentiary or procedural matters, particularly in criminal cases.

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 docketed 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 informal advice 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

The Commission conducts investigations into complaints, often contacting the judge involved as well as witnesses. All complaints and investigations are, however, private and confidential unless public disclosure is permitted by the rules relating to judicial conduct or by order of the Supreme Court. See Rule 607(a). One exception to the confidentiality rule exists if the Commission gives written notice to the judge, prior to the judge's acceptance of a cease and desist order, that the order will be made public. Rule 611(a).

Other 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, the Impaired Judges Assistance Committee, 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. Rule 609.

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. Rule 611(b); Rule 613.

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 five 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, issue an order of cease and desist, or recommend to the Supreme Court the discipline or compulsory retirement of the judge. Discipline means public censure, suspension, or removal from office. Rule 620.

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. Rule 622. The respondent judge then has the opportunity to file written exceptions to the Commission's report. A judge who does not wish to file exceptions may reserve the right to address the Supreme Court with respect to disposition of the case. Rule 623.

If exceptions are taken, a briefing schedule is set; thereafter, argument is scheduled before the Supreme Court at which time respondent may appear in person and by counsel. If exceptions are not taken, the Commission's findings of fact and conclusions of law are conclusive and may not later be challenged by respondent. The matter is set for hearing before the Supreme Court at which time the respondent may appear in person and by counsel but only for the limited purpose of making a statement with respect to the discipline to be imposed. In either case, the Supreme Court may adopt, amend, or reject the recommendations of the Commission. Rule 623.

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

COMMISSION ACTIVITY IN 1997

At the close of 1997, there were 499 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	156
District Magistrate Judges	69
Municipal Judges	257

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 the judicial system, is a judge within the meaning of this Code. Judge is defined as: 'Any judicial officer who performs the functions of a judge in the courts of this state including Kansas Supreme Court Justices, Court of Appeals Judges, District Judges, District Magistrate Judges, and Municipal Court Judges. Where applicable, the term "judge" also contemplates Masters, Referees, Temporary Judges, *Pro Tempore* Judges, Part-time Judges, and Commissioners if they perform any functions of a judge in any court of this state.' " 1997 Kan. Ct. R. Annot. 447-448. No attempt has been made in this report to enumerate those individuals.

In 1997, the Commission received 347 inquiries by telephone, by letter, or by personal visit to the Clerk's Office. Of those individuals, 224 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 224, 58 responded by filing a complaint. An additional 65 complaints were received for a total of 123 complaints received in 1997. Of those complaints, 36 were eventually docketed. For a discussion of the distinction between undocketed and docketed complaints, see this report at pages 14 and 15.

The Commission disposed of 88 undocketed complaints in 1997 and 34 docketed complaints.

COMMISSION ON JUDICIAL QUALIFICATIONS
January 1, 1997 - December 31, 1997

TOTAL NUMBER OF INQUIRIES	347
RULES AND COMPLAINT FORMS MAILED	224
NUMBER OF COMPLAINTS RECEIVED	123
NUMBER OF COMPLAINTS DOCKETED	36
DOCKETED COMPLAINTS PENDING ON JANUARY 1, 1997	9

DISPOSITION OF DOCKETED COMPLAINTS

Dismissed. Complainant did not provide corroborating evidence.	1
Dismissed after investigation	18
Dismissed after investigation with caution	7
Letter of informal advice issued	3
Private Cease and Desist Order issued	1
Public Cease and Desist Order issued	3
Formal Hearing held resulting in public admonishment by the Commission	1
Pending on December 31, 1997	<u>11</u>
	45

POSITION OF JUDGE AGAINST WHOM COMPLAINT WAS FILED

District Judge	20
District Judge, Retired	3
District Magistrate	5 (2 are law trained)
Municipal Judge	4 (3 are law trained)
Hearing Officer	<u>1</u> (law trained)
	33 ¹

¹ More than one complaint was filed against the same judge.

Substance of Complaints

1997

Abuse of Power	13
Administrative Inefficiency	4
Conduct Inappropriate to Judicial Office	16
Conflict of Interest	15
Delay in Making Decision	9
Denied Hearing/Denied Fair Hearing	15
Disagreement With Ruling	48
Ex Parte Communication	15
Failure to Enforce Order	0
Failure to State a Complaint, Appealable Matter, or Legal Issue	26
Improper Election Campaign Conduct /Political Activity Inappropriate to Judicial Office	0
Improper Influence	6
Inappropriate Personal Comment	8
Injudicious Temperament	25
Prejudice/Bias	21
Failure to Control Courtroom	0
Intemperance	2

Individual complaints may contain more than one allegation of misconduct.

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

No ethical violation was found when a judge refused to entertain motions and petitions which had been previously ruled on. This was a matter for appeal.

No ethical violation was found when, subsequent to rendering a decision, the judge granted a request for reconsideration. Attorneys appeared before the judge and presented arguments. The judge ultimately reversed the decision.

No ethical violation was found when a district court judge scheduled a hearing on a Saturday with appropriate notice to the parties.

A complainant alleged that the judge was aware that a witness gave contradicting testimony and did nothing about it. No ethical violation was found because the veracity of witnesses is a matter within the discretion of the trial judge and the subject of appeal.

No ethical violation was found in an isolated instance of delay. The judge forgot, was corrected, then apologized and ruled.

No ethical violation was found when a judge told the defendant that the Order of Withdrawal by the defendant's attorneys, signed by the judge, could not be appealed.

A litigant was at the back of the courtroom trying to control her child who was screaming and kicking the courtroom doors. The judge asked the litigant, in a voice loud enough to be heard at the back of the courtroom, to take the child from the courtroom until he summoned their return at the end of the docket. The complainant alleged the judge was rude; however, no ethical violation was found because the judge has a duty to maintain decorum in the courtroom.

EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

Following a formal hearing, a judge was publicly admonished for incarcerating a defendant who did not receive the constitutional protection of due process. The Commission found that generally judges should not be subject to discipline for legal errors; however, in this instance they found legal error rose to the level of judicial misconduct.

A judge was publicly ordered to refrain from speech, gesture or other conduct that could reasonably be perceived as sexual harassment.

A judge was informally advised that he should not have signed a nunc pro tunc order when the judge questioned the order and believed the original journal entry correctly stated another judge's imposition of sentence.

A public cease and desist order was issued to a judge for intentionally or unintentionally using national origin as a condition of probation in the form of restricting association.

A judge was informally advised that litigants should be treated with courtesy.

A judge was informally advised to follow the statutory provisions of the Kansas Open Records Act in responding to requests for information from the public.

A judge was cautioned to avoid ex parte communication and to avoid taking judicial action without giving interested parties an opportunity to be heard.

A private cease and desist order was issued to a judge for participation in ex parte communication with members of a victim's family.

A public cease and desist order was issued to a judge who, in open court, made disparaging and inappropriate comments by attacking the character of the victims in indecent liberties cases.

A judge was cautioned about failure to explain to the parties why the judge felt a conflict would exist if an attorney represented his son when appearing before the judge.

A district magistrate judge was cautioned regarding signing orders when there is a question about the legality of the order. When legal questions exist, advice from a district judge should be obtained.

A judge relayed relevant information in a case to a counselor. The judge was informally advised that notice should have been given to all parties at the time of the communication by letter or by conference call.

A judge was cautioned to carefully draft and review future orders because language in a particular order was overly broad and because there was a discrepancy between the judge's verbal order and the written order.

A judge was cautioned regarding a 2 1/2-year delay in making a decision in a divorce matter.

A defendant alleged the judge at sentencing referred to the defendant as "scum." It was found that the judge was making a general statement and not directing the remark toward a specific individual. The judge was cautioned about using language which could be construed as derogatory of a litigant.

APPENDICES

Appendix A

REPORTED JUDICIAL DISCIPLINARY CASES UNDER RULE 601

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.

In re Alvord, 252 Kan. 705, 847 P.2d 1310 (1993).

A magistrate judge was found to have treated a female employee in a manner which was not dignified and courteous. Unsolicited inquiries on behalf of the employee regarding a traffic ticket were also found to be inappropriate.

The Supreme Court found violations of Canons 2 and 3 and ordered public censure.

In re Handy, 254 Kan. 581, 867 P.2d 341 (1994).

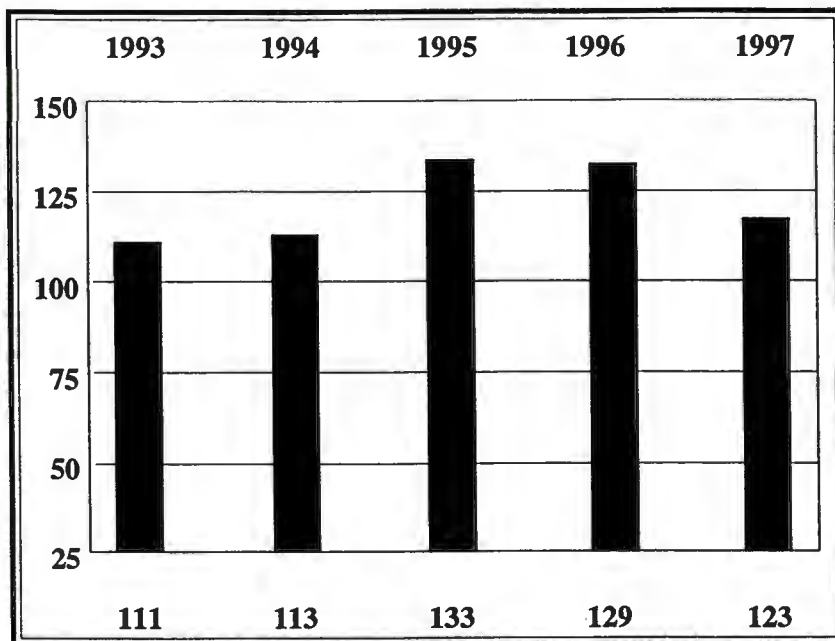
A judge of the district court was found to have violated Canons of the Code of Judicial Conduct in the following particulars: ignoring a conflict of interest by handling cases that involved the city which employed him as a municipal judge; creating an appearance of impropriety in purchasing property involved in pending litigation; and lacking sensitivity to conflict of interest, creating an appearance of impropriety, and being less than candid in a real estate transaction.

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

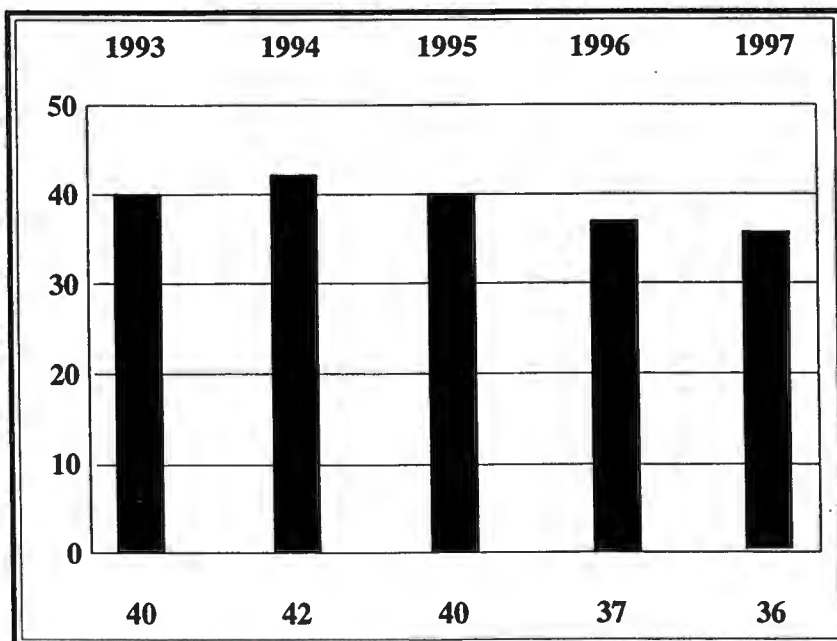
Appendix B

Five-Year Summary of Complaints Received and Docketed

COMPLAINTS RECEIVED



COMPLAINTS DOCKETED



Appendix C

Commission on Judicial Qualifications Statistical Summaries 1993-1997

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Total Number of Inquiries Rules and Complaint Forms	301	311	302	356	347
Mailed	171	137	194	250	224
Number of Complaints Received	111	113	133	129	123
Number of Complaints Docketed	40	42	40	37	36
Docketed Complaints Pending at the beginning of the year	4	10	17	11	9

Disposition of Docketed Complaints

Dismissed, no violation found	1	1	0	0	0
Dismissed after investigation	16	23	27	22	18
Dismissed after investigation with caution	1	3	3	8	7
Letter of informal advice issued	6	3	5	4	3
Cease and Desist issued	4	1	1	0	1
Public Cease and Desist issued	1	0	3	1	3
Notice of Formal Proceedings filed	1	0	1	0	1
Judge resigned	0	1	1	2	0
Dismissed for lack of information	3	1	5	2	1
Referred to Office of Judicial Administration	1	0	0	0	0
Complaints Pending year end	10	17	11	9	11

Type of Judge Complaint Against

District Judge	25	29	35	24	23
District Magistrate Judge	4	4	3	8	5
Municipal Judge	3	7	6	4	4
Judge Pro Tempore	3	2	2	0	0
Hearing Officer	0	0	1	1	1

Appendix D

Sample Complaint Form

Kansas Commission on Judicial Qualifications

Room 374, Kansas Judicial Center 301 SW Tenth Avenue Topeka, KS 66612 785-296-3229

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

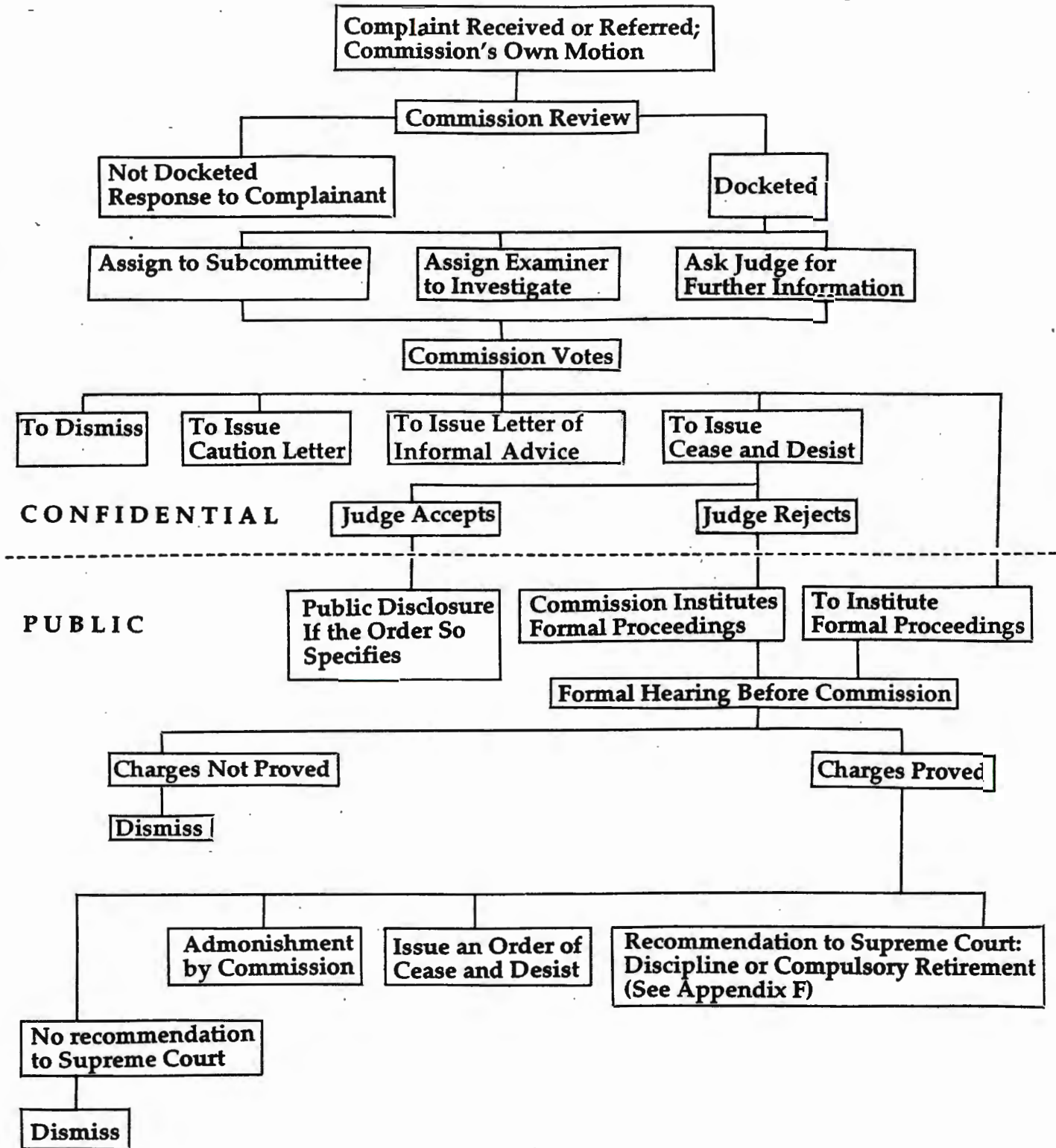
Details and specifics of complaint: Please state all specific facts and circumstances which you believe constitute judicial misconduct or disability. Include any details, names, dates, places, addresses, and telephone numbers which will assist the Commission in its evaluation and investigation of this complaint. Identify the names and addresses of any witnesses. If there are documents, letters, or any other materials *directly* related to the complaint, please include them. Do not include documents which do not directly support or relate to the complaint, for example, documents only generally related to the litigation. Keep a copy of everything you submit for your records.

Continue on next page

Appendix E

COMMISSION PROCEDURES

RECEIPT OF COMPLAINT THROUGH FORMAL PROCEEDINGS



Appendix F

PROCEEDINGS BEFORE THE SUPREME COURT

REVIEW OF COMMISSION FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

