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State of Kansas

Commission on Judicial Qualifications

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Kansas Judicial Center

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2008 ANNUAL REPORT

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STATE OF KANSAS



COMMISSION ON JUDICIAL QUALIFICATIONS

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**FROM THE CHAIR**

Respect for the judiciary depends upon public confidence in the integrity and independence of judges. Understanding and observing ethical standards is an important element in upholding the public's confidence and ensuring an independent and honorable judiciary. It is noteworthy that the Kansas Commission on Judicial Performance, by its judicial performance evaluation of judges standing for retention in the November 2008 election, gave judges high marks. Kansas judges continue to do a good job.

Judges, however, are not held to a standard of perfection. Mistakes are made and, in adversarial proceedings, it may be expected that one or more of the litigants may be unhappy with the judge's decisions. That is why mechanisms are in place to hold judges accountable. Legal issues may be appealed, and ethical issues may be referred to the Commission. Thus, the Commission plays an important role in ensuring respect and public confidence in the judiciary.

It has been an eventful year for the Commission on Judicial Qualifications. In addition to addressing the complaints filed against judges during the past year, the Commission worked diligently in proposing to the Kansas Supreme Court revisions to the Kansas Code of Judicial Conduct. The Supreme Court approved the proposed revisions to the Code of Judicial Conduct in January 2009.

As I conclude my two-year term as Chair of the Commission, I wish to again extend my personal thanks to Carol G. Green, Clerk of the Appellate Courts and Secretary of the Commission, and to her assistant, Michelle Moore, for their cooperation and assistance. Their contributions to the Commission remain invaluable.

The Commission, as always, welcomes your suggestions and comments.

A handwritten signature in black ink, appearing to read "Robert J. Fleming".

Robert J. Fleming, Chair  
Kansas Commission on Judicial Qualifications

March 2009

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**BIOGRAPHIES**  
**MEMBERS WHO SERVED DURING 2008**



**Nancy S. Anstaett**, a lawyer member of the Commission, practices in Overland Park, Kansas, and is a member of Rowe & Anstaett, L.L.C. She graduated from Kansas State University, *magna cum laude*, with degrees in journalism and sociology in 1977. She attended Washburn University School of Law and received her juris doctorate, *magna cum laude*, in 1980. She is a member of the Johnson County and Kansas Bar Associations and the Kansas Women Attorneys Association. Ms. Anstaett has served on the Kansas Continuing Legal Education Commission and was elected to the Kansas Supreme Court Nominating Commission where she served from 1996-2000. She has been a member of the Commission on Judicial Qualifications since July 2002.



**The Honorable J. Patrick Brazil** received a BS/BA degree from Rockhurst College, Kansas City, Missouri, in 1957. He received his law degree from Washburn University School of Law in 1962. Judge Brazil was a state district judge from 1972 until his appointment to the Kansas Court of Appeals on December 11, 1985. He was appointed Chief Judge June 1, 1995, and served as Chief Judge until his retirement in January 2001. He continues to sit with the appellate courts as a Senior Judge. He has served in the officer positions of the Kansas District Judges' Association, including president from 1980-1981. He was a member of the Advisory Committee of the Kansas Judicial Council for Civil and Criminal Pattern Instructions for Kansas and is currently a member of the KBA Bench/Bar Committee. He served on the Kansas Continuing Legal Education Commission from its creation in 1985 to July 1, 1991. In 1994, he received one of six Outstanding Service Awards conferred by the Kansas Bar Association. He is a member of the Topeka South Rotary Club. Judge Brazil has been a member of the Kansas Commission on Judicial Qualifications since 1984, including service as chairman from 1991 to 1994 and vice chair (includes chair of Panel A) from 2003 to 2005.



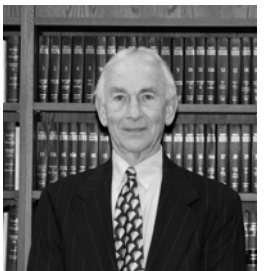
**Bruce Buchanan**, a lay member of the Commission, is president of Harris Enterprises, a media company based in Hutchinson. He received a bachelor's degree in journalism from Kansas State University in 1981. Following graduation, he worked as a reporter and editor at the *Hutchinson News*, then joined the Harris Group's management training program. In late 1984, he was named editor and publisher of the *Parsons Sun*. In 1990, he became editor and publisher of the *Olathe Daily News*. In 1996, he moved to Hutchinson as editor and publisher of *The News*. He became a director of Harris Enterprises in 1995 and vice president in 1998. He assumed his current post in 2006. Buchanan is on the board of the Hutchinson/Reno County Chamber of Commerce. He is past president of the Kansas Press Association. Buchanan has been a member of the Commission since May 1999.



**Dr. Mary Davidson Cohen**, a lay member of the Commission from Leawood, received a bachelor of science in education at the University of Missouri at Columbia in 1958. She received her master of arts in science education for elementary teachers from Columbia University in 1962 and her doctorate in education administration from University of Kansas in 1977. She began her education career as a teacher in 1958 teaching fifth, sixth, and seventh grades in the Kansas City, Missouri, School District. She also taught science for K-7 grades for the Kansas City School District's educational television station KCSD – Channel 19. She was assistant vice chancellor for academic affairs at the University of Kansas Regents Center from 1976 to 1992. She served as assistant director of the William T. Kemper Foundation from 1993 to 1997. She served as vice president for adult and continuing education and dean of the graduate school at Saint Mary College in Leavenworth, Kansas, from 1997 to 1999. She served the U. S. Secretary of Education as the regional representative (SRR) for Region VII, covering the states of Iowa, Kansas, Missouri, and Nebraska. She has been a member of the Commission since July 2004.



**The Honorable Robert J. Fleming**, a district judge from Parsons, received a BS/BA degree from Pittsburg State University in 1964 and a Juris Doctorate degree from Washburn University Law School in 1968. He practiced law in Pittsburg from 1968 until 1996, during which time he served as president of the Crawford County Bar Association, a member of the Law in Education Committee of the Kansas Bar Association, and a member of the Ethics and Grievance Committee of the Kansas Bar Association. Fleming was appointed to the bench in August 1996. He is currently a member of the Labette County Bar Association and the Kansas Bar Association. He served on the Board of Trustees of the Labette County Correctional Camp, was the previous chairman of the Eleventh Judicial District Community Corrections Board, is a member of the Executive Committee of the Kansas District Judges' Association, serves on the Nonjudicial Salary Initiative Committee, and as a member of the Kansas Judicial Council. He has been a member of the Commission since May 1999.



**The Honorable Theodore Branine Ice**, a retired 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 served until he retired in March 2002. He 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), Multi-Disciplinary Team, and CRB (Citizens Review Board). 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 serves currently as assigned judge in the Ninth Judicial District. He has been a member of the Commission since July 1994.





***The Honorable Jennifer L. Jones*** is the Administrative Judge for the City of Wichita Municipal Court. Prior to being appointed to this position, she served as a district judge in the Juvenile Division of the 18<sup>th</sup> Judicial District for eight years. When elected to that position, she became the first African American female district court judge in the history of the State of Kansas. She obtained a Bachelor's Degree in Social Work from the University of Missouri-Columbia in 1982. She received her Juris Doctorate Degree from the University of Oklahoma in May 1985. Jones

began her career as an Assistant District Attorney in Muskogee, Oklahoma. Upon her return to Wichita in May 1988, she became associated with the law firm of Bruce & Davis and became a partner in January 1992. She maintained an active general practice in the areas of commercial, juvenile, family, bankruptcy, and probate law. Judge Jones has served as an assigned panel member of the Kansas Court of Appeals. She is an active member of the community, serving on the Board of Directors for the YMCA Community Development Board, President of the Wichita Chapter of Links, Inc., and a member of the Air Capital Wichita Chapter of Jack and Jill of America. She has been a member of the Commission since May 1999.



***The Honorable David J. King***, a district judge from Leavenworth, is a graduate of the University of Kansas (B.A. 1976; J.D. 1980). He was in the private practice of law in Leavenworth, Kansas, from 1981 to 1986. He served as Assistant Leavenworth County Attorney from 1981 to 1984. He was appointed to the Leavenworth District Court in May 1986. He has served as the Chief Judge for the First Judicial District since 1991. He is a member of the Leavenworth Bar Association, the Kansas Bar Association, and the Kansas District Judges Association. He has been a member of the

Commission since November 2004.



***Jeffery A. Mason***, a lawyer member of the Commission, practices law in Goodland, Kansas. He received his undergraduate degree from the University of Kansas in 1980 and his law degree from the University of Kansas Law School in 1983. He has practiced law in Goodland since 1983 and is a member of the firm of Vignery & Mason L.L.C. Prior to his appointment to the Commission, he served as a member of the Kansas State Highway Advisory Commission (1996-2006) and as a member of the Kansas Continuing Legal Education Commission (1997-2003), serving as

chairperson from 2001-2003. He also served on the Kansas Water Authority from 1988-1994. He is an active member of the Sherman County, Kansas, and American Bar Associations. He served for a number of years on the Continuing Legal Education Committee for the Kansas Bar Association and received the Kansas Bar Association Outstanding Service Award in 1998. He is presently a member of the Kansas Bar Foundation Iolita Committee and the Kansas Bar Association Board of Governors. He served as president of the Solo and Small Firm Section in 1996-1997. He is active in the community as president of the Northwest Kansas Area Medical Foundation, Genesis-Sherman County, and serves as secretary for the Kiwanis Club of Goodland. He has been a member of the Commission since July 2006.





**Christina Pannbacker**, a lay member of the Commission from Washington, received a bachelor's degree in communication arts from Washburn University and a master's degree in journalism and mass communications from Kansas State University. She has worked for weekly newspapers in Wamego, Marysville, and Washington, Kansas. She was editor and publisher of *The Washington County News* for five years. Pannbacker has served one term on the USD 222 Board of Education, been a Girl Scout leader for 20 years, and participated in many projects and activities as a community volunteer. She has been a member of the Commission since July 2003.



**Mikel L. Stout**, lawyer member of the Commission, is in private practice with Foulston Siefkin LLP 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 (Regent 2000-2004) (Secretary 2004-2005) (Treasurer 2005-2006); (President-Elect 2006-2007); (President 2007-2008); 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 and Admiral Windwagon Smith XXVIII 2001-02. He has been a member of the Commission since January 1984.



**William B. Swearer**, a lawyer member of the Commission, graduated from Princeton University in 1951 and the University of Kansas School of Law in 1955. He served with the United States Army (artillery) in Korea in 1952-53. He is of counsel to the law firm of Martindell, Swearer and Shaffer, LLP, of Hutchinson, Kansas. He has practiced law in Hutchinson since 1955. Swearer served as a member (1979-92) and as chair (1987-92) of the Kansas Board of Discipline for Attorneys, and currently serves on the Review Committee. He has been active in the Kansas Bar Association, having served on various committees, as one of the Association's representatives to the House of Delegates of the American Bar Association (1995-2000), and as president of the Association (1992-93). He received Outstanding Service Awards in 1977 and 1979 and the 2002 Distinguished Service Award from the Kansas Bar Association. He is a member of the Reno County, Kansas and American Bar Associations, as well as a member of the Kansas Bar Foundation and the American Bar Foundation (state chair, 1997-2001). Swearer has been active in his community where he has served as president of the Hutchinson Chamber of Commerce and as a board member of the Hutchinson Hospital Corporation, Health Care, Inc., the Hutchinson Hospital Foundation, and the Hutchinson Library. He currently serves as a trustee of Wesley Towers, Inc. He has been a member of the Commission since July 2003.



**Carolyn A. Tillotson**, a lay member of the commission from Leavenworth, is a native of Little Rock, Arkansas. She received a bachelor's degree in English from the University of Arkansas. She has served as Leavenworth City Commissioner, Leavenworth Mayor, and Kansas State Senator for Leavenworth and Jefferson Counties. She is a former newspaper reporter and editor and a former health care public relations director. She is a CASA volunteer. She has been a member of the Commission since May 2004.



**The Honorable Thomas L. Toepfer**, a district judge in Hays, Kansas, graduated *summa cum laude* from Fort Hays State University in 1972 with a degree in economics. He received his law degree from Washburn University School of Law in 1975. While at Washburn, he was the Director of the Neighborhood Youth Corps program and assistant to the director of federal programs for Topeka Public Schools. He practiced law in Hays until his election to the bench in 2000. He was City Prosecutor for the City of Hays for 23 years and had a general civil trial practice.

Prior to his election to the bench, he was a member and chairman of the Board of Trustees of St. Anthony Hospital and was a founding member and chairman of the Board of Directors of Hays Medical Center. He served as a member and as president of the Board of Education of Hays U.S.D. 489 and has served on other community boards. He is a member of the Executive Committee of the Kansas District Judges' Association and is a member of the Ellis County and Kansas Bar Associations. He was appointed to the Commission in July 2008.

### 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 and third editions of the *Kansas Appellate Practice Handbook* and received a KBA Outstanding Service Award in 1995. She received the KBA Distinguished Government Service Award in 2008. She has served 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 3, 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.

Originally conceived as a one-tier system with nine members, the Commission functioned effectively for a quarter century before significant change was implemented. On May 1, 1999, a two-tier system was adopted, expanding the Commission from nine to fourteen members, including six active or retired judges, four lawyers, and four non-lawyers. The members are divided into two panels. One panel meets each month. In formal matters, one panel investigates the complaint, while the other conducts the hearing, thus separating the investigative and judicial functions. All members are appointed by the Supreme Court and serve four-year terms. The Chair of the Commission chairs one panel, while the Vice-Chair chairs the second panel.

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	1997-1999
Judge Kathryn Carter	1999-2001
Judge Theodore B. Ice	2001-2003
Robert A. Creighton	2003-2005
Judge Jennifer L. Jones	2005-2007
Judge Robert J. Fleming	2007-2009



Past members of the Commission who served with distinction include:

<b>Served while active judges and subsequently as retired judges</b>	
James J. Noone	Wichita
James W. Paddock	Lawrence
<b>Served as retired judges</b>	
L. A. McNalley	Salina
O. Q. Claflin, III	Kansas City
<b>Served while active judges</b>	
Bert Vance	Garden City
Harold R. Riggs	Olathe
Brooks Hinkle	Paola
M.V. Hoobler	Salina
Lewis C. Smith	Olathe
Steven P. Flood	Hays
Kathryn Carter	Concordia
Lawrence E. Sheppard	Olathe
<b>Served as lawyer members</b>	
Robert H. Nelson	Wichita
Edward F. Arn	Wichita
John J. Gardner	Olathe
Fred N. Six	Lawrence
Charles S. Arthur	Manhattan
David J. Waxse	Overland Park
Karen L. Shelor	Shawnee Mission
John W. Mize	Salina
Robert A. Creighton	Atwood
<b>Served as non-lawyer members</b>	
Georgia Neese Gray	Topeka
Kenneth C. Bronson	Topeka
Dr. Nancy Bramley Hiebert	Lawrence
Marcia Poell Holston	Topeka
Ray Call	Emporia
Carol Sader	Prairie Village

## 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. See 2008 Kan. Ct. R. Annot. 645-691.

### **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. An administrator, Michelle Moore, 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, by e-mail, or by visiting the Appellate 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 9.4(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 a panel of the Commission for review at its next meeting. 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 panel may be able to consider a complaint and reach a decision at the same meeting.

All complaints are placed on the agenda, and the panel 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 a panel feels that further investigation is warranted.

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

### **Disposition of Docketed Complaints**

After investigation of docketed complaints, the panel 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 letter of caution or informal advice may be issued if the investigation does not disclose sufficient cause to warrant further proceedings. Such letters have been issued, for example, to address isolated instances of delay, discourtesy to litigants or counsel, or inappropriate personal conduct.

A cease and desist order may be issued when the panel 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 continuing to handle matters in a case in which the judge has recused.

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

## **Confidentiality**

The panel assigned a complaint conducts investigations, often contacting the judge involved as well as witnesses. The Commission and its staff are bound by a rule of confidentiality 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 panel 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 or a panel 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 or panel'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 or a panel may also, in its discretion, make public all or any part of its files involving a candidate for election or retention in judicial office.

The rule of confidentiality does not apply to the complainant or to the respondent. See Rule 607(b).

## **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 a panel 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 that notice of formal proceedings is conducted by the other panel, which has no knowledge of the investigation or prior deliberations.

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. 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 panel 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 panel must be present when evidence is introduced. A vote of five members of the panel is required before a finding may be entered that any charges have been proven.

If the panel 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 panel 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 panel'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.

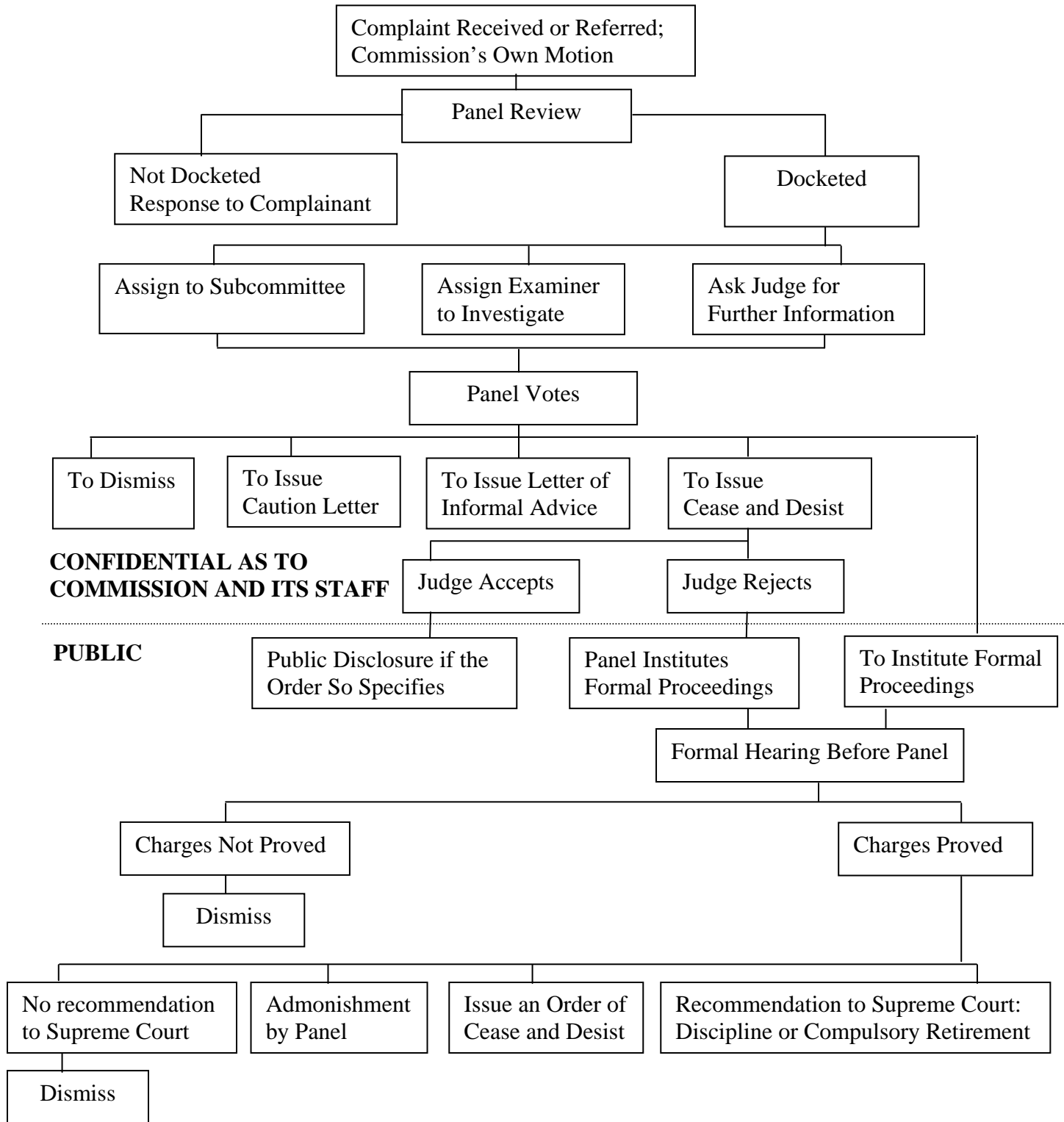
If exceptions are taken, a briefing schedule is set; thereafter, argument is scheduled before the Supreme Court at which time respondent appears in person and, at respondent's discretion, by counsel. If exceptions are not taken, the panel's findings of fact and conclusions of law are conclusive and may not later be challenged by respondent. The matter is set for hearing before the Supreme Court, at which time the respondent appears in person and may be accompanied 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 panel. Rule 623.

The following flow charts trace the progress of a complaint before a panel of the Commission and through Supreme Court proceedings.



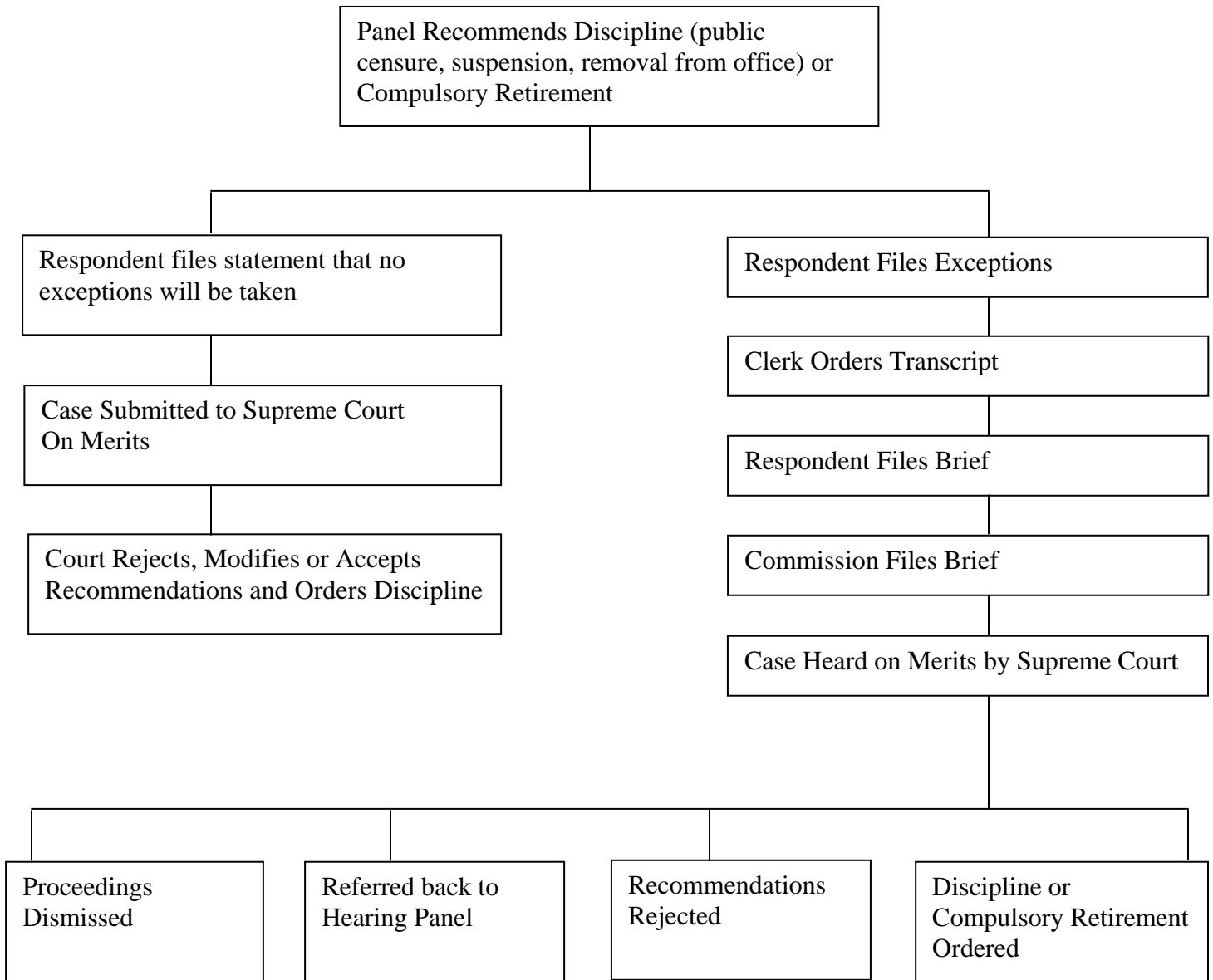
COMMISSION PROCEDURES

RECEIPT OF COMPLAINT THROUGH FORMAL PROCEEDINGS



PROCEEDINGS BEFORE THE SUPREME COURT

REVIEW OF COMMISSION FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS



## COMMISSION ACTIVITY IN 2008

At the close of 2008, there were 521 judicial positions subject to the Commission's jurisdiction.

Justices of the Supreme Court	7
Judges of the Court of Appeals	13
District Court Judges	165
District Magistrate Judges	79
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.'" 2008 Kan. Ct. R. Annot. 673-674. No attempt has been made in this report to enumerate those individuals.

In 2008, the Commission received 396 inquiries by telephone, by letter, by e-mail, or by personal visit to the Clerk's Office. Of those individuals, 305 were provided copies of the Supreme Court Rules Relating to Judicial Conduct, a complaint form, and a brochure describing the work of the Commission. A complaint form is also available on the Commission's web site. [www.kscourts.org](http://www.kscourts.org) A total of 222 complaints were received in 2008. Of those complaints, 40 were eventually docketed. For a discussion of the distinction between undocketed and docketed complaints, see this report at pages 11 and 12. See Figure 1 for a five-year summary.

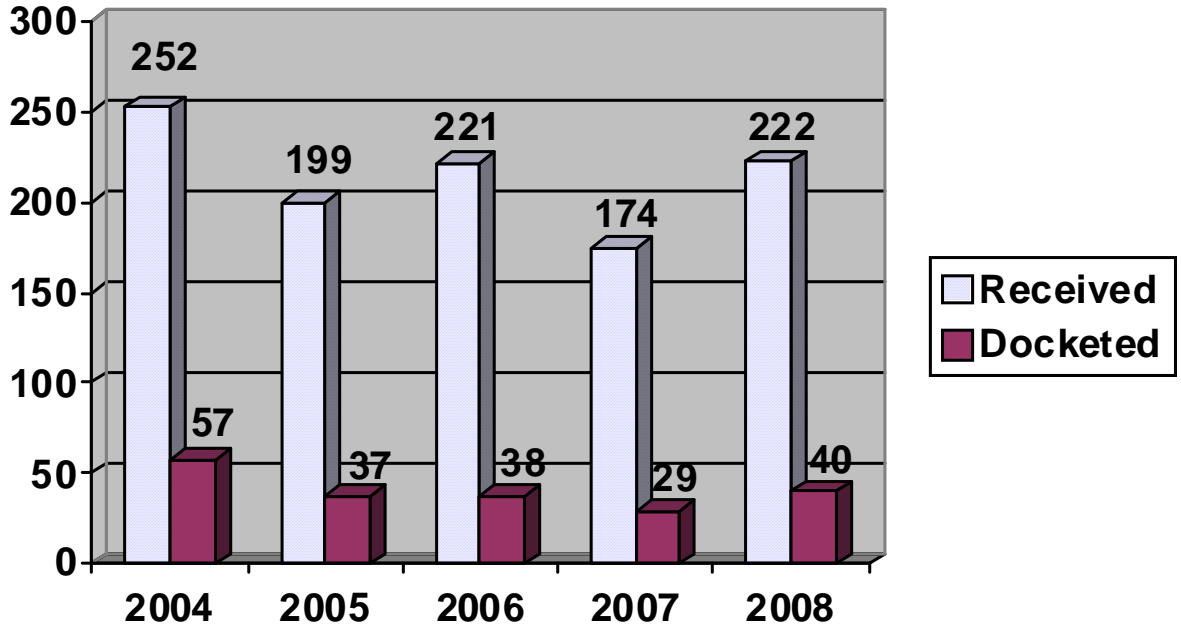


Figure 1: Five-year Summary of Complaints Received and Docketed

The Commission disposed of 188 undocketed complaints and 46 docketed complaints in 2008. See Figure 2 for a five-year summary.

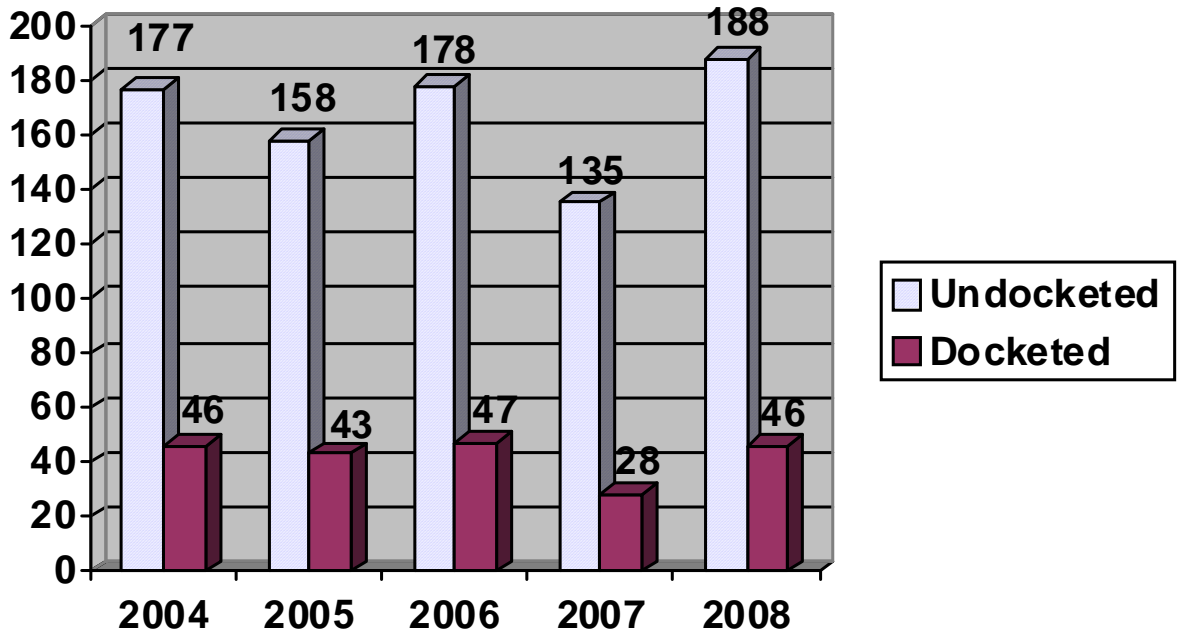


Figure 2: Five-year Summary of Disposed Complaints which may include carryover from a prior year



**COMMISSION ON JUDICIAL QUALIFICATIONS**  
**January 1, 2008 – December 31, 2008**

TOTAL NUMBER OF INQUIRIES	396
RULES AND COMPLAINT FORMS MAILED	305
NUMBER OF COMPLAINTS RECEIVED	222
NUMBER OF COMPLAINTS DOCKETED	40
DOCKETED COMPLAINTS PENDING ON JANUARY 1, 2008	12

**DISPOSITION OF DOCKETED COMPLAINTS**

Notice of Formal Proceedings filed and/or Recommendations to Supreme Court	2
Public Cease & Desist	3
Private Cease & Desist	2
Caution	6
Informal Advice	2
No Action – Resolved	1
Dismissed after investigation	30
Pending on December 31, 2008	6
	52

**POSITION OF JUDGE AGAINST WHOM A DOCKETED COMPLAINT WAS FILED**

Chief Judge	3
District Judge	16
District Magistrate Judge	5 (2 law trained)
Municipal Judge	3 (2 law trained)
Pro Tempore	1 (law trained)
Senior Judge	2
Retired District Judge	2
Judicial Candidates	2
Retired, Taking Assignments	1
	35 <sup>1</sup>

<sup>1</sup>In some instances, more than one complaint was filed against the same judge.



## SUBSTANCE OF COMPLAINTS

2008

Abuse of Power	2
Administrative Inefficiency	11
Conduct Inappropriate to Judicial Office	7
Conflict of Interest	12
Delay in Making Decision	29
Denied Hearing/Denied Fair Hearing	27
Disagreement with Ruling	19
Ex Parte Communication	11
Failure to Enforce Order	3
Failure to State a Complaint, Appealable Matter, or Legal Issue	69
Improper Election Campaign Conduct/Political Activity Inappropriate to Judicial Office	17
Improper Influence	15
Inappropriate Personal Comment	12
Injudicious Temperament	11
Prejudice/Bias	43
Failure to Control Courtroom	2
Intemperance	0
Incompetence in Law	5
Failure to Discharge Disciplinary Responsibilities	6
Sexual Harassment	2
Retaliation	1

Individual complaints may contain more than one allegation of misconduct.



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

No violation was found when it was alleged a judicial candidate, who was a former judge, appeared in a television commercial in a courtroom setting and judicial robe. Although the content of the commercial was factually correct, the candidate voluntarily revised the commercial, emphasizing the past nature of the judicial service, to avoid the appearance of impropriety.

No violation was found after it was alleged a judge presided over a hearing in a case in which the judge had previously recused. It was determined that all parties knew of the previous recusal and did not voice an objection because the witness who precipitated the recusal was not a party to the pending hearing.

No violation was found for a judge not responding to written correspondence. The correspondence was from a petitioner and to respond would have been *ex parte* communication and a violation of Canon 3(B)(7).

No violation was found against a judge for delay after it was alleged the judge failed to act on a mandate from the Kansas Court of Appeals for resentencing. After review, it was determined the matter was appropriately scheduled.

No violation was found when it was alleged a judge signed and filed a Motion Minutes Sheet disposing of a matter prior to a scheduled hearing. It was determined the case was handled summarily according to court procedure.

No violation was found for *ex parte* communication when it was alleged a judge contacted a witness outside court and without the presence of counsel. The contact was solely administrative in substance between two officers of the court.

No violation was found against a judge for delay after it was alleged a judge failed to rule on motions at the trial level. The Minutes Reports and Registry of Action Report reflected that every motion was considered and ruled on.

No violation was found when it was alleged a judge was rude, arrogant, and expressed bias and prejudice in many words and actions. The transcript of the proceeding did not reflect any violations.

No violation was found after it was alleged a judge selectively turns the courtroom recorder off and on. The recorder in question is not operated by the judge but by staff. The only time the recorder is turned off is between cases to conserve tape or if the tape runs out. Transcript of proceedings reflects the reason for every stoppage of tape.





## EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

A judge was cautioned about *ex parte* communication resulting from e-mail correspondence.

A judge, who lost his/her temper and used profanity in the courtroom, was publicly ordered to control his/her temper and cease and desist from using inappropriate language in court.

A judge was cautioned on the issue of delay regarding the determination of indigency for purposes of appeal. All matters should be disposed of promptly. The indigency determination is of particular importance because appeal is delayed.

A judge, who allowed too little time between scheduled events and failed to honor all commitments, was cautioned on the importance of scheduling adequate time between events.

A judge, who took 14 months to file an order, was cautioned on the issue of delay. The importance of disposing of all judicial matters promptly, efficiently, and fairly was emphasized.

A Notice of Formal Proceedings was filed against a judge alleging violations arising out of a relationship with an administrative assistant and the discharge of the judge's administrative duties with regard to the assistant's employment. The judge retired from office, and the matter was stayed until such time as the judge should seek or accept judicial assignments or seek another judicial position within the State of Kansas.

A judge, who lost his/her temper and engaged in emotional outbursts, was found to have violated Canon 2A and Canon 3B, subsections (3) and (4). After a public hearing, the matter was referred to the Supreme Court with a recommendation of public censure. The Supreme Court ordered public censure.

A judge, who acknowledged delay of several months in ruling on a 60-1507 motion, was informally advised regarding the issue of delay. The Commission stressed the importance of a judge disposing of all judicial matters promptly.

A judge was publicly ordered to cease and desist from voluntarily testifying as a character witness.



# 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 3A(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 7B(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 3A(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 3A(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 2A and 2B 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, 2A, and 3B(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, 3A(1), 3A(3), and 3A(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 2A 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, 2A, 3C, 5C(1), 5C(3), and 5C(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 2A, 3A(5), and 3B(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, 2A, 3C(1), 3C(1)(c), and 5C(1). The court ordered public censure.

**REPORTED JUDICIAL DISCIPLINARY CASES  
UNDER RULE 601A**

**In re Moroney, 259 Kan 636, 914 P.2d 570 (1996).**

A majority of the Commission on Judicial Qualifications recommended to the Kansas Supreme Court that Respondent be disciplined by removal from the bench. After Findings of Fact, Conclusions of Law, and Recommendations were submitted to the Supreme Court, Respondent voluntarily resigned from office. The Supreme Court removed the case from its docket, finding the hearing on removal to be moot.



**In re Platt, 269 Kan. 509, 8 P.3d 686 (2000).**

A judge of the district court followed a disqualification policy with respect to several attorneys which involved not hearing newly filed cases and implementation of an “informed consent policy” for ongoing cases in which the judge did not recuse.

The Supreme Court found violations of Canons 1, 2A, 3B(1), 3B(5), 3B(7), 3C(1), and 3E(1). The court ordered public censure.

**In re Groneman, 272 Kan. 1345, 38 P.3d 735 (2002).**

A district court judge allowed his administrative assistant to maintain dual employment during courthouse hours and falsely reported time and leave information.

The respondent stipulated to violations of Canons 1, 2A, 2B, 3C(1), (2), and (4). The Supreme Court ordered public censure and other conditions, including repayment to the State of Kansas for hours not worked.

**In re Robertson, 280 Kan. 266, 120 P.3d 790 (2005).**

A district court judge admitted violation of the judicial district’s administrative order regarding computer and internet usage when, over an extended period of time, he used the county-owned computer located in his office at the courthouse to access and display sexually explicit images, messages, and materials.

The Supreme Court found violations of Canon 1, Canon 2, and Canon 4(A)(2). The court ordered removal from office.

**In re Pilshaw, 286 Kan. 574, 186 P.3d 708 (2008).**

A judge of the district court was found to have lost her temper and engaged in emotional outbursts.

The Supreme Court found violations of Canons 2A and 3B(3) and (4). The Supreme Court ordered public censure.

**Appendix B**  
**Statistical Summaries 2004 – 2008**

	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Total Number of Inquiries	360	341	368	363	396
Rules and Complaint Forms mailed	326	340	332	325	305
Number of Complaints Received	252	199	221	174	222
Number of Complaints Docketed	57	37	38	29	40
Docketed Complaints Pending at beginning of year	5	16	14	11	12
<hr/> <b>Disposition of Docketed Complaints</b> <hr/>					
Dismissed after investigation	27	23	17	19	30
Dismissed after investigation with caution	0	3	0	3	0
Letter of caution issued	10	4	7	2	6
Letter of informal advice issued	1	2	3	0	2
Private Cease and Desist issued	5	2	0	2	2
Public Cease and Desist issued	0	4	3	2	3
Notice of Formal Proceedings filed and/or Recommendation to the Court	0	1	2	0	2
Withdrawn	0	0	1	0	0
Judge resigned	3	0	7	0	0
No action – issue corrected	0	0	2	0	1
Complaints pending year end	16	14	10	12	6
<hr/> <b>Position of Judge Against Whom a Docketed Complaint was filed<sup>1</sup></b> <hr/>					
Supreme Court Justice	0	0	7	0	0
Chief Judge	10	2	4	3	3
District Judge	25	18	18	14	16
District Magistrate Judge	6	5	1	1	5
Municipal Judge	4	2	5	7	3
Judge Pro Tempore	0	2	1	1	1
Hearing Officer/Court Trustee	0	0	1	0	0
Senior Judge	1	0	0	0	2
Retired, Taking Assignments	0	1	1	1	1
Retired, District Judge	0	0	0	0	2
Judicial Candidate	0	0	0	0	2

<sup>1</sup>In some instances, more than one complaint was filed against the same judge.







# Kansas Commission on Judicial Qualifications

Room 374, Kansas Judicial Center 301 SW Tenth Avenue Topeka, Kansas 66612 785-296-2913

## 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

**BEFORE YOU COMPLETE THIS FORM,** please review the accompanying brochure which describes the functions of the Commission on Judicial Qualifications. Note in particular the examples of functions which the Commission cannot perform.

PLEASE TELL THE COMMISSION IN TWENTY-FIVE WORDS OR LESS WHAT THE JUDGE DID THAT WAS UNETHICAL. INCLUDE A MORE DETAILED EXPLANATION ON THE FOLLOWING PAGE.


Continue on Next Page







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