

# NEVADA COMMISSION ON JUDICIAL DISCIPLINE

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## STANDING COMMITTEE ON JUDICIAL ETHICS



2016 - 2017 BIENNIAL REPORT

## FY 2016 – FY 2017 BIENNIAL REPORT

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## Introduction

Section 1.464 of the Nevada Revised Statutes directs the Nevada Commission on Judicial Discipline (the “Commission”) to submit annual and biennial reports summarizing the activities of the Commission during the preceding fiscal year or the preceding two fiscal years. This report responds to that directive and includes statistical information regarding the disposition of complaints and a statement of the budget and expenses of the Commission. There is also a description of the Commission’s authority and processes with regard to judicial discipline, a description of the actions taken by the Commission during the fiscal year, and a list of the Commission members and alternate Commission members.

Included in this report is also a description of the Standing Committee on Judicial Ethics (the “Standing Committee”). The Standing Committee was created by the Nevada Supreme Court in 1997, with a revision in 2011, and its authority can be found in the Rules Governing the Standing Committee on Judicial Ethics, Part VIII of the Supreme Court Rules. Although this information is not required to be a part of this report, the Standing Committee is an integral part of the maintenance of judicial ethics in this state. The Standing Committee acts as a reference point for judges and the public and also as a preventive measure so that ethical problems can be avoided. Additionally, pursuant to the Supreme Court Rules, the Executive Director of the Commission is also the Executive Director of the Standing Committee. This effectively melds the Commission and the Standing Committee functions regarding judicial ethics, although the two bodies operate independently. Both the Commission and the Standing Committee are comprised of volunteers who agree to undertake important functions.

Much of the work of the Commission and the Standing Committee is reflected on the detailed website maintained by Commission staff. The website, found at <http://judicial.state.nv.us>, is divided into two parts, one for the Commission and one for the Standing Committee. The former provides extensive information as to the mission and processes of the Commission, including reference to the constitution, statutes, procedural rules and complaint forms. It also contains the Commission’s disciplinary decisions, an index of the decisions, case references, statistics, and other information. The same is true for the Standing Committee portion of the website. That part of the website contains the explanation of the Standing Committee’s responsibilities, copies of its advisory

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opinions, and a listing of current members. Accordingly, this report incorporates much of the information set forth on the Commission's website.

Respectfully submitted,

Paul C. Deyhle  
General Counsel and Executive Director  
Nevada Commission on Judicial Discipline

September, 2017

## **I. The Nevada Commission on Judicial Discipline.**

Established by the Nevada Constitution, Article 6, Section 21, the Commission is the body authorized to censure, retire, remove or otherwise discipline judges in this state. Disciplinary decisions of the Commission may be appealed by the affected judge to the Nevada Supreme Court. The Legislature establishes the grounds for disciplinary action, including violations of the Revised Code of Judicial Conduct which the Nevada Supreme Court adopts. Article 7 of the Constitution still provides for impeachment by the Legislature. The Nevada Supreme Court has referred to the Commission as a court of judicial performance.

The Legislature has also adopted sections 1.425 - 1.4695 of the Nevada Revised Statutes which supplements the constitutional provisions and provides for the circumstances under which a judge may be disciplined and many of the procedural aspects of judicial discipline. The Commission has also adopted Procedural Rules which supplement the constitutional and statutory provisions. The Commission also decides whether a judge is incapacitated and what actions to take in that instance. The Commission's website has extensive information regarding the Commission, constitution, statutes and rules governing the Commission, all of the Commission's public decisions and orders, and information regarding members and staff.

### **Membership.**

The Commission is composed of three lay members, two district court judges and two lawyers. The three lay members are appointed by the Governor. No more than two lay members can be of the same political party and they must reside in different counties. Alternates are appointed pursuant to the inherent power of the appointing authority pursuant to Nevada Supreme Court case law. The Chair and Vice-Chair are selected from the three primary lay appointees, by vote of the entire Commission. Current lay members are Chairman Gary Vause (Democrat, Clark County), Mary-Sarah Kinner (Republican, Washoe County), Joseph "Mike" McGinness (Republican, Churchill County), Stefanie Humphrey (Democrat alternate, Carson City), and John Krmpotic (Republican alternate, Washoe County).

Two district judge members are appointed by the Nevada Supreme Court. District judge alternates are appointed to serve in case of disqualification and limited jurisdiction judges are appointed as alternates to serve during public proceedings against judges from that level of the judiciary pursuant to statutory mandate. No judge may sit in a case involving a judge from his or her court.

Current district court judicial members are Jerome Polaha (Second Judicial District, Washoe County), Mark Denton (Eighth Judicial District, Clark County), Leon Aberasturi (alternate)(Third Judicial District, Lyon County) and Thomas Stockard (alternate)(Tenth Judicial District, Churchill County). Justice Court alternate members are Patricia Lynch (Reno Justice Court) and Karen Bennett-Haron (Las Vegas Justice Court). Municipal court alternate members are Martin Hastings (Las Vegas Township), Dorothy Nash Holmes (Reno Municipal Court), Mason Simons (Elko Justice/Municipal Court) and Thomas Armstrong (Carson City Justice/Municipal Court).

Two lawyer members are appointed by the State Bar of Nevada. Standing alternates are appointed to serve in case of disqualification. Current lawyer members are Karl Armstrong (Las Vegas), Bruce Hahn (Reno), Don Christensen (alternate)(Reno) and Lawrence Irwin (alternate)(Las Vegas).

### **Process.**

Complaints are filed with the Clerk of the Commission. The Executive Director may file complaints as well. The Commission and its staff review all complaints and the Commission meets to decide whether to investigate the complaints or any portion of a particular complaint. At this stage, the Commission must find that a reasonable inference can be drawn that a judge committed misconduct or is incapacitated. If so, the Commission directs the Executive Director to perform an investigation. The Executive Director contracts with a private investigative agency to perform independent investigative functions. The Commission must then decide from investigative reports whether there is a likelihood that it could find "a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge named in the complaint." If so, the Commission must require the judge to respond to the complaint. After the judge responds and the Commission considers the response, the Commission must again decide whether there is the required evidence for disciplinary action. It is after such a finding that a case could move forward to a public proceeding.

If a public proceeding ensues, the Executive Director contracts with private counsel to serve as "Special Counsel" (also referred to as "Prosecuting Officer"). The Special Counsel independently reviews the evidence and files a Formal Statement of Charges, based on counts for which the Commission issued a finding of reasonable probability. The judge, with or without counsel, files an answer and a public hearing, similar to a trial, ensues. The burden of proof is on the Special

Counsel to show by clear and convincing evidence that a violation of the Revised Code of Judicial Conduct occurred.

Other possible dispositions include summary dismissal without investigation, dismissal after full or limited investigation and issuance of a letter of caution (characterized under the rules as a “non-disciplinary event”). If the Commission determines that a judge has committed misconduct which is minor and would be most appropriately addressed through rehabilitation, treatment, education or minor corrective action, the Commission may enter into an agreement with the judge to defer formal disciplinary proceedings and require the judge to undergo the appropriate corrective action.

See Appendix A for flow charts.

### **Possible Sanctions.**

The main function of the Commission is to protect the public, not to discipline judges. Nevertheless, the range of punishments includes: permanent removal from office, bar to holding judicial office, suspension with or without pay, completion of a probationary period pursuant to conditions deemed appropriate by the Commission, pursuit of a remedial course of action, fines (normally payable to local law libraries), additional education and training at the judge’s expense, public censure, public or private reprimand, or requirement to undergo monitoring by the Commission and mentoring by an appropriate individual. Judges can also be required to issue public and private apologies to affected individuals. Judges can further be required to undergo physical and/or psychiatric evaluation and testing if the issue of a mental or physical disability is raised during the disciplinary process.

### **Appellate Review.**

Only a judge, not a complainant, can appeal from the Commission’s decision. Appeal is taken directly to the Nevada Supreme Court. The Nevada Supreme Court defers to the Commission’s findings of fact and it determines if the record supports the findings. The Nevada Supreme Court conducts a *de novo* review of legal issues, including appropriateness of the punishment. The Nevada Supreme Court can lessen the punishment or increase it. The Court has adopted the “objective reasonable person standard” to evaluate whether conduct violates the Revised Nevada Code of Judicial Conduct. The Commission applies the same standard.

In July 2007, the Commission conducted one non-public interim removal or suspension hearing (Halverson) that was the subject of an appeal to the Nevada Supreme Court and resulted in the first published opinion regarding that process. It was then and remains one of a few decisions throughout the United States dealing with interim suspensions. Statutory provisions enacted in the wake of the decision provide additional due process requirements.

### **Time Limitations**

Effective in January of 2010, the Nevada Legislature imposed time limits on the Commission's ability to consider complaints filed against judges. In NRS 1.4655, the law now provides that the Commission shall not consider complaints from acts occurring more than three years before the date of the complaint or more than one year after the complainant knew or should have known of the conduct, whichever is earlier. Exceptions to this time limit are when there is a continuing course of conduct and the end of the conduct is within the time limit; there is a pattern of recurring misconduct and at least one act is within the time periods; and, any period in which the judge has concealed or conspired to conceal evidence of misconduct is not included in the time limits. The Legislature has also required that the Commission take action within 18 months after receipt of a complaint by dismissing the complaint, attempting to resolve it pursuant to statute, entering into a deferred discipline agreement, imposing discipline pursuant to an agreement with the judge, or authorizing the filing of a formal statement of charges based on the required evidentiary standard.

The Commission is authorized to extend these time limitations pursuant to NRS 1.4681 for good cause shown. Additionally, the time limits are to be computed without including periods of delay attributable to another judge, periods of delay between Commission meetings, periods of negotiation between the Commission and the subject judge, and periods when a complaint is held in abeyance pending the disposition of a court case related to the complaint. Any dismissal for failure to comply with time limits shall not occur unless the Commission determines that the delay is unreasonable and the judge's rights to a fair hearing have been violated. A delay of an investigation by more than 24 months after the filing of a complaint is *prima facie* evidence of an unreasonable delay.

The Legislature has established a statute of limitations on judicial misconduct complaints. Notably, most jurisdictions in the country have no statute of limitations for judicial misconduct and some disciplinary actions have occurred based on conduct many years prior and sometimes before an individual became a judge.



## **II. Commission Action**

The work of the Commission described below shows that the Commission and its staff are challenged by a constant and varied work flow. The Commission meets either in person or by telephone conference calls many times during the year to review complaints, to consider investigations, and to determine the resolution of cases. It also meets in person for formal proceedings. Additionally, the Chairperson is constantly in contact with the Executive Director about policy and meeting matters.

### **Formal Proceedings/Public Actions**

The Commission has the authority to impose discipline including censure and removal pursuant to NRS 1.440(1). A public proceeding is held only when the Commission has made a finding that a reasonable probability exists that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against a judge.

In August 2015, the Commission filed its Formal Statement of Charges against the Honorable Michael Fletcher, Walker River Township Justice of the Peace. The Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on February 17, 2016, in which Judge Fletcher admitted that he committed violations of Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.5(A), 2.7, 2.9 and 2.11, and accepted the Commission's public reprimand which ordered Judge Fletcher to successfully complete, at his own expense, one course at the National Judicial College, and familiarize himself with Nevada law pertaining to ex parte communications, bail, O.R. releases and disqualification.

The Commission entered into a Stipulation and Consent Order for Resignation of the Honorable Ron Kent, Pahrump Justice of the Peace, filed on March 16, 2016.

In June 2015, the Commission filed its Formal Statement of Charges against Steven Jones, Former District Court Judge, Eighth Judicial District Court. In January 2016, the Commission granted the Prosecuting Officer's Motion for Summary Judgment. In March 2016, the Commission issued its Findings of Fact, Conclusions of Law and Imposition of Discipline in which it found that Steven Jones had violated Canon 1, Rules 1.1, 1.2 and 1.3; Canon 3, Rules 3.1(C), 3.1(D) and 3.1(E). The Commission permanently and forever barred Steven Jones from serving in any elected or appointed judicial office in Nevada.

In August 2015, the Commission filed its Formal Statement of Charges against the Honorable Kimberly Wanker, District Court Judge of the Fifth Judicial District Court. The Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on March 3, 2016, in which Judge Wanker admitted that she committed violations of Canon 1, Rule 1.1; Canon 2, Rules 2.2, 2.5(A), 2.6, 2.9 and 2.12(A), and accepted the Commission's public reprimand which ordered Judge Wanker to successfully complete a minimum of two (2) courses at the National Judicial College, at her personal expense; study and familiarize herself with Nevada law dealing with disciplinary actions in the courtroom; make a private apology to Robert Carson; issue an Order that vacates, nunc pro tunc, the finding of contempt of Robert Carson; and reimburse Robert Carson the \$500 fine which he paid as part of his contempt punishment.

In June 2015, the Commission filed its Formal Statement of Charges against the Honorable Dawn Haviland, Goodsprings Township Justice Court. The Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on April 25, 2016, in which Judge Haviland admitted that she committed violations of Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.2, 2.5(A) and 2.9, and accepted the Commission's public reprimand.

In February 2016, the Commission filed its Formal Statement of Charges against the Honorable Catherine Ramsey, Municipal Court Judge, City of North Las Vegas. The Commission entered into a Stipulation and Order of Consent to Discipline filed on August 23, 2016, in which Judge Ramsey admitted that she committed violations of the Preamble to the Code, along with Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.2, 2.3(A) and (B), 2.5(A) and (B), 2.9(A) and 2.11(A)(1); and Canon 3, Rule 3.1(E), and accepted the Commission's discipline wherein Judge Ramsey voluntarily agreed not to seek re-election; was ordered suspended for three (3) months without pay; ordered to issue a written apology to the three (3) complainants; admitted wrongdoing; and agreed to submit to a fitness for duty exam at her own expense.

In June 2016, the Commission filed its Formal Statement of Charges against the Honorable Michael Kalleres, Municipal Court Judge, City of Ely. The Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on August 23, 2016, in which Judge Kalleres admitted that he committed violations of the Preamble to the Code, along with Canon 1, Rules 1.2 and 1.3; and Canon 2, Rule 2.9(A) and accepted the Commission's public reprimand which ordered Judge Kalleres to successfully complete, at his own expense, one course at the National Judicial College.

In February 2016, the Commission filed its Formal Statement of Charges against the Honorable Sean Hoeffgen, Municipal Court Judge, City of North Las Vegas. The Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on August 23, 2016, in which Judge Hoeffgen admitted that he committed violations of the Preamble to the Code, along with Canon 1, Rule 1.2; and Canon 2, Rules 2.4(B) and (C), 2.5(B) and 2.15(A), and accepted the Commission's public reprimand which ordered Judge Hoeffgen to successfully complete, at his own expense, one course at the National Judicial College.

In order to resolve the pending Verified Statement of Complaint against Sylvia Beller, Hearing Master, Eighth Judicial District Court, Clark County, the Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on August 23, 2016, in which Hearing Master Beller admitted that she committed a violation of Canon 2, Rule 2.8(B), and accepted the Commission's public reprimand.

In March 2017, the Commission filed its Formal Statement of Charges against the Honorable Dawn Haviland, Justice of the Peace, Goodsprings Township Justice Court, Clark County. During the pendency of the investigation and prior to the filing of the Formal Statement of Charges, the Commission entered its Order Suspending Respondent from the Exercise of Judicial Office with Salary on December 28, 2016. On August 29, 2017, the Commission entered its Findings of Fact, Conclusions of Law and Imposition of Discipline finding that Respondent had committed violations of Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.2, 2.3, 2.5(A), 2.6(A), 2.8(B), 2.9(C) and (D); and Canon 3, Rules 3.1(E) and 3.5 for which Judge Haviland was ordered suspended for one (1)-year without pay; ordered to attend educational courses and conferences at her own expense; and that upon Judge Haviland's resumption of her judicial duties, she be appointed a judicial mentor for a period of one (1)-year.

In June 2016, the Commission filed its Formal Statement of Charges against the Honorable Melanie Andress-Tobiasson, Justice of the Peace, Las Vegas Township, Clark County. On February 23, 2017, the Commission entered its Findings of Fact, Conclusions of Law and Imposition of Discipline finding that Respondent had committed violations of Canon 2, Rules 2.2, 2.4(B), 2.5(A), 2.6(A), 2.9 and 2.11(A)(1) for which Respondent was publicly reprimanded and required to pay a fine in the amount of \$1,000.00.

In order to resolve the pending Verified Statement of Complaint against Douglas Smith, District Court Judge, Eighth Judicial District Court, Clark County, the Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on February 27, 2017, in which Judge Smith admitted that he

committed violations of the Preamble to the Code along with Canon 4, Rules 4.1(A)(11), 4.1(B) and 4.4(A), and accepted the Commission's public reprimand.

In order to resolve three (3) pending Verified Statements of Complaint against Conrad Hafen, Former Justice of the Peace, City of Las Vegas, Clark County, the Commission entered into a Stipulation and Order of Consent to Public Censure and Agreement Not to Serve in a Judicial Position filed on February 27, 2017, in which former Judge Hafen admitted that he committed violations of Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.2, and 2.6(A) and 2.8(B). Respondent accepted the Commission's discipline and agreed not to seek, accept or serve in any judicial or adjudicative position or capacity in Nevada.

### **Informal Resolution and Private Discipline**

The informal resolution of a complaint outside of a formal, public hearing is available to the Commission at different stages of the disciplinary process and in different forms. Of course, pursuant to NRS 1.4653, the Commission is authorized to remove a judge, publicly censure a judge or impose "other forms of discipline" when the judge has committed willful misconduct, has willfully or persistently failed to perform the duties of office, or is habitually intemperate. Public censure or other forms of discipline may also be imposed if the violation of the Revised Code of Judicial Conduct was not knowing or deliberate. The different stages of the process where other forms of discipline may be imposed include:

- A complaint alleges that a judge is incapacitated, an investigation reveals a judge may have a disability, or the judge raises a disability as an issue before the filing of a formal statement of charges. The Commission shall attempt to resolve these matters informally and this includes voluntary retirement and addressing the disability adequately through treatment and with a deferred discipline agreement. NRS 1.4665(2).
- If the Commission reasonably believes that a judge has committed an act or engaged in behavior that would be more appropriately addressed through rehabilitation, treatment, education or minor corrective action, the Commission may enter into an agreement with the judge to defer formal disciplinary proceedings and require the desired action. NRS 1.468(1). This cannot be done if the Commission has determined pursuant to NRS 1.467 that there is sufficient evidence that could establish grounds for disciplinary action under NRS 1.4653 (willful misconduct or habitually intemperate). The misconduct must be minor in nature. Upon compliance with the

conditions of the agreement, the Commission may dismiss the complaint or take other appropriate action. NRS 1.468(2)-(6).

- After a judge responds to a complaint and the Commission finds that a reasonable probability exists that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge, the Commission can then find that the misconduct would be addressed more appropriately through rehabilitation, treatment, education or minor corrective action and the Commission may enter into a deferred discipline agreement. This is not available for misconduct involving several described actions. NRS 1.467(3),(4).

*See also* Commission Procedural Rule 29. During Fiscal Year ("FY") 2016 and 2017, the Commission did not impose any private, informal discipline. When such nonpublic discipline is imposed, those matters remain confidential pursuant to NRS 1.4683.

### **Cautionary Letters**

The Commission is authorized at several stages in the disciplinary process to issue a letter of caution to a judge as described here:

- The Commission determines that a complaint does not contain allegations of objectively verifiable evidence from which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated but a letter of caution is appropriate. NRS 1.4657(2).
- After authorizing an investigation, the Commission reviews the report and determines that there is not a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against a judge but a letter of caution should be issued. NRS 1.4667(2).
- After initially finding sufficient evidence and requiring a judge to answer a complaint, the Commission determines that there is not a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against a judge but a letter of caution should be issued. NRS 1.467(2).

*See also* Commission Procedural Rules 12 and 13. Pursuant to NRS 1.4657(2), a letter of caution is not a form of discipline. Nevertheless, when a letter of caution is issued, it can be considered by the Commission when deciding the appropriate action to take on a subsequent complaint unless the letter of caution is not relevant to the misconduct alleged in the subsequent complaint. A cautionary letter is not available for misconduct involving several described forms of serious misconduct. NRS 1.467(4). The Commission issued several letters of caution during FY 2016.

- The Commission issued a cautionary letter to a justice court judge regarding ex parte communication and performance of duties.
- The Commission issued a cautionary letter to a justice court judge regarding ex parte communication and performance of duties and advised of a Standing Committee opinion on point.
- The Commission issued a cautionary letter to a justice court judge regarding ex parte communication and performance of duties and advised of a Standing Committee opinion on point.
- The Commission issued a cautionary letter to a justice court judge regarding maintaining the appearance of impartiality.
- The Commission issued a cautionary letter to a hearing master regarding compliance with the law.
- The Commission issued a cautionary letter to a district court judge regarding due diligence.
- The Commission issued a cautionary letter to a district court judge regarding maintaining the appearance of impartiality.
- The Commission issued a cautionary letter to a district court judge regarding maintaining proper decorum in the court room and demeanor toward litigants.
- The Commission issued a cautionary letter to a district court judge regarding timeliness of rulings.
- The Commission issued a cautionary letter to a district court judge regarding timeliness of rulings.

- The Commission issued a cautionary letter to a justice court judge regarding the administration of the court and disclosure.
- The Commission issued a cautionary letter to a municipal court judge regarding campaign activities.
- The Commission issued a cautionary letter to a district court judge regarding maintaining the appearance of impartiality.

The Commission also issued several letters of caution during FY 2017.

- The Commission issued a cautionary letter to a district court judge regarding maintaining proper decorum in the court room and demeanor toward litigants.
- The Commission issued a cautionary letter to a district court judge regarding timeliness of rulings.
- The Commission issued a cautionary letter to a hearing master regarding compliance with the law.
- The Commission issued a cautionary letter to a justice court judge regarding maintaining the appearance of impartiality, ex parte communications and the administration of the court.
- The Commission issued a cautionary letter to a justice court judge regarding performance of duties.
- The Commission issued a cautionary letter to a district court judge regarding performance of duties and ex parte communications.
- The Commission issued a cautionary letter to a municipal court judge regarding the independence and integrity of the judiciary.
- The Commission issued a cautionary letter to a justice court judge regarding timeliness of rulings.
- The Commission issued a cautionary letter to a court master regarding performance of duties.



- The Commission issued a cautionary letter to a district court judge regarding performance of duties.
- The Commission issued a cautionary letter to a justice court judge regarding maintaining the appearance of impartiality.
- The Commission issued a cautionary letter to a municipal court judge regarding performance of duties.
- The Commission issued a cautionary letter to a district court judge regarding timeliness of rulings.
- The Commission issued a cautionary letter to a district court judge regarding maintaining the appearance of impartiality.

### **Statistical Information**

The large majority of complaints filed with the Commission regarding judicial conduct result in a dismissal. This is primarily due to the fact that many complainants seek a remedy with the Commission regarding the merits of their litigation when the Commission has no jurisdiction over such matters. Additionally, many complaints are bare allegations of bias or prejudice by the complainant who feels that he or she lost in the litigation because the judge must have been biased against the complainant, although there is no real evidence of such. Many complaints are also filed by inmates seeking yet another avenue of relief from their convictions or are of the categories mentioned above. A percentage breakdown of the types of complainants who filed judicial complaints in FY 2016 and FY 2017 can be reviewed in Appendix B.

It should also be pointed out that there are nearly 600 judges, judicial officers, continuing part-time judges, *pro tempore* part-time judges, and retired judges subject to recall for service over which the Commission has jurisdiction. During election years, this figure climbs even higher since the Commission's jurisdiction extends to not only sitting judicial officers, but also all candidates for judicial office as well. At this time, there are 7 Supreme Court Justices, 3 Court of Appeals judges, 82 district court judges, 67 justices of the peace and 22 municipal court judges. Additional judicial officers include senior justices and judges (51), part-time judges (190), and numerous hearing/special masters, commissioners and referees.

During FY 2016, the Commission received 145 new complaints, authorized 11 investigations, initiated 7 public cases and completed 169 cases. The



Commission's number of open cases as of June 30, 2016 (end of FY 2016) was 77. As of September 30, 2016, the date of publication of the 2016 Annual Report, the number of open cases was 45, all of which were considered by the Commission at its quarterly meeting held in December 2016.

During FY 2017, the Commission received 163 new complaints, considered 21 requests for reconsideration, authorized 23 investigations, initiated 3 public cases and completed 181 cases. The Commission's number of open cases as of June 30, 2017 (end of FY 2017) was 54. As of September 30, 2017, the date of publication of this Biennial Report, the number of open cases was 72, all of which will be considered by the Commission at its quarterly meeting to be held in November 2017. For FY 2017, the average case duration was 90 days, the average length of time to complete investigations was 82 days, the average percentage of operating budget expended on investigations was 15%, and the total number of disciplinary decisions imposed was 8.

In striving to be more proactive than reactive, and to foster the Commission's "teach rather than catch" philosophy, the General Counsel and Executive Director ("GCED") of the Commission welcomes and encourages open communication with the judiciary. Numerous judicial ethics inquiries and requests for guidance are received every year from the judiciary and judicial office candidates. During the biennium, approximately 96 inquiries were received, many of which required detailed research, follow-up discussions and numerous staff hours to address.

See additional statistical information in Appendix B.

### **Budget and Staff**

The Legislature approved a budget of \$872,166 for FY 2016. This amount includes \$206,464 in operating funds. The Commission's total expenditures were \$703,308 allowing \$168,858 to be reverted to the General Fund.

The Legislature approved a budget of \$824,737 for FY 2017. This amount includes \$172,143 in operating funds. The Commission's total expenditures were \$680,288 allowing \$144,449 to be reverted to the General Fund.

See budget chart in Appendix C.

The Commission's staff consists of the GCED, an Associate General Counsel, and three Management Analysts. The Commission contracts with private Prosecuting Officers and private investigators as necessary to comply with its

constitutional and statutory mandates. In addition to providing legal counsel to the Commission, the GCED is also responsible for the administrative duties of the Commission and the Standing Committee on Judicial Ethics.

As reported in the 2014-2015 Biennial Report, Fiscal Years 2014 and 2015 saw a substantial increase in the number of judicial complaints filed with the Commission. As of November 2013, a two-year backlog of cases and investigations faced the newly appointed GCED and new staff members. In an effort to effectively reduce this crippling backlog, process all of the new cases being filed, as well as respond to numerous litigation matters, the Interim GCED (who temporarily replaced the retiring and long-term GCED while the Commission searched for a successor) engaged the services of private contract attorneys. The utilization of these private attorneys was continued by the current GCED upon joining the Commission.

For many years, the Commission has consistently struggled with a small budget, inadequate resources, and a bare-bones staff. In the past, in an effort to reduce necessary expenses, the Commission has had to suspend the work of investigators and contract attorneys as a result of the depletion of budgetary funds prior to the end of the fiscal year, thereby causing the Commission to no longer have sufficient funds to pay its bills and meet its current obligations. This seemingly endless shortfall of adequate funds, staff and resources led to a long-running and significant backlog of complaints and investigations, and less than desirable attention to administrative matters.

Without additional funding, coupled with the continued state of inadequate staff, antiquated resources and outdated technological and communication capabilities, higher caseloads, as well as the increasing prevalence of more complex cases, these backlogs would grow substantially. The associated delays attributable to these backlogs, together with the many operational inefficiencies plaguing the office, were viewed by the Commission as unacceptable and wholly unresponsive to Nevada's citizens and judges whom the Commission serves.

In order to reverse this dire trend and significantly improve the Commission's responsiveness to Nevada's citizens and judges, the new GCED successfully petitioned the legislature for much needed modifications to the Commission's budget during the 2015 Legislative Session. These modifications included the restructuring of office staff and the addition of a new associate general counsel position and a full-time management analyst. These additions to staff sought to eliminate the Commission's long-standing reliance on private, contract attorneys and retired staff members (contracted through outside, temporary staffing

agencies), improve operational efficiency and continuity, and provide additional case/investigative oversight and management.

Additional budget modifications included the relocation of the Commission's offices to a larger, more modern facility, purchase of new computers, equipment, and a new case management software system, replacement of a 12-year old server, access to legal research databases, and the reallocation of staff resources to accommodate the Commission's increasing workload, together with many new resources and long overdue technology and communication upgrades.

The Nevada Legislature, on a bi-partisan basis, approved the Commission's budgetary requests, thereby ushering in a new era of judicial and public service for the Commission, and enabling the GCED and Commission staff to enthusiastically commence the all-important phase of budget implementation. Once fully implemented, the changes and upgrades had an immediate effect as discussed below.

These changes, together with the previous implementation of various cost and quality controls, and important revisions to the Commission's procedures and processes (which have avoided confusion and duplicity while also improving accountability and transparency), has enabled the Commission to operate and carry out its constitutional and statutory mandates more effectively and efficiently than ever before in its history, and at a significant cost savings to the taxpayers.

#### **THE COMMISSION'S REPORT CARD UPON IMPLEMENTATION OF BUDGET**

Average Case Duration:<sup>1</sup> From Calendar Year ("CY") 2010 to 2013, the average duration of a judicial discipline case was 202.75 days. From CY 2014 to 2015, this average fell to 144 days, and as of CY 2016 to the filing of the 2016 Annual Report, this average fell again to 99.56 days, which equates to over a 50% decline over a 3-year period.

See bar graph depicting average case duration from CY 2010 to CY 2016 set forth in Appendix B.

Length of Time to Complete Investigations:<sup>2</sup> From CY 2010 to 2015, the average length of time to complete an investigation was 221 days. In contrast,

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<sup>1</sup> Calculated from the date a complaint is received by the Commission until the complaint is either dismissed or Commission determines that a formal statement of charges is to be filed.

<sup>2</sup> The length of time to complete investigations in CY 2014 and CY 2015 was significantly impacted by the two-year backlog of existing investigations preceding CY 2014.

from CY 2016 to the filing of the 2016 Annual Report, the average length of time to complete an investigation fell 82.81% to 38 days.

See bar graph depicting average length of time to complete investigations from CY 2010 to CY 2016 set forth in Appendix B.

Investigative Costs: The average investigative costs per case from FY 2007 to 2013 ranged from a low of \$2,476.58 to a high of \$6,588.20. As a result of more effective investigative oversight and management, the average investigative costs per case declined dramatically during FY 2014 to 2016 from a low range of \$1,552.86 to a high of \$2,715.75. Additionally, From FY 1999 to 2012, the average percentage of the Commission's operating budget expended on investigations was 50.16%. Upon implementation of the Commission's new budget and other cost and quality controls, the average percentage of the Commission's operating budget expended on investigations from FY 2014 to the filing of the 2016 Annual Report, fell to 21.23%.

See bar graph and pie chart depicting average investigation costs per case from FY 2007 to FY 2016, and average percentage of operating budget expended on investigations from FY 1999 to FY 2016, set forth in Appendix B.

Taxpayer Savings Associated with Commission Changes: The actual cost savings attributable to the implementation of the Commission's new budget over FY 2016 and 2017 is approximately \$60,000. The cost savings to the taxpayers in the years to follow is estimated to be over \$24,000 per year.<sup>3</sup>

Transparency to the Public and Judiciary: The total number of disciplinary actions made public by the Commission in CY 2016 alone was 10, which is equal to the total number of public disciplinary actions taken by the Commission over the previous 5 years combined.

Funds Returned to the General Fund: As a result of the implementation of the Commission's new budget and numerous cost and quality controls, the Commission is operating more efficiently and effectively than ever before and at a significant cost savings to the taxpayers. Consequently, the Commission was able to return to the General Fund \$168,858 and \$144,449 of FY 2016 and FY 2017 legislatively approved funds, respectively.

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<sup>3</sup> While substantial savings have been realized from the implementation of numerous cost and quality controls since November 2013 (depicted by the amount of funds returned to the General Fund), these dollar amounts represent the specific savings associated with the Commission's budget modifications alone.

See Appendix C for budget chart.

**Current Litigation**

N/A

**III. Commission Members**

The members of the Judicial Discipline Commission volunteer a substantial amount of time to carry out the extremely large amount of work required. The current members of the Commission are as follows:

<b>Regular Commission Members</b>	<b>Alternate Commission Members</b>
Gary Vause, Chair	Honorable Leon Aberasturi
Joseph "Mike" McGinness, Vice-Chair	Honorable Thomas Stockard
Mary-Sarah Kinner	Honorable Thomas Armstrong
Honorable Mark R. Denton	Honorable Karen Bennett-Haron
Honorable Jerome Polaha	Honorable Martin Hastings
Karl Armstrong, Esq.	Honorable Patricia Lynch
Bruce Hahn, Esq.	Honorable Dorothy Nash Holmes
	Honorable Mason Simons
	Donald Christensen, Esq.
	Laurence Irwin, Esq.
	Stefanie Humphrey
	John Krmptic

**IV. The Standing Committee on Judicial Ethics.**

The Standing Committee on Judicial Ethics was created by Nevada Supreme Court Rules, Part VIII, in 1997. The Standing Committee's purpose is to provide judges and aspirants to judicial office advisory opinions regarding ethical matters that may arise in the ordinary course of judicial service, or in the elective or appointive process. The GCED of the Commission also serves as the Executive Director of the Standing Committee.

The Standing Committee renders non-binding advisory opinions on hypothetical questions regarding the Revised Nevada Code of Judicial Conduct and assists the Nevada Supreme Court by studying and recommending additions to, amendments to, or repeal of provisions of the Revised Nevada Code of

Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

The Standing Committee is composed of six judges appointed by the Nevada Supreme Court. Three must be limited jurisdiction judges and three must be district court judges. Twelve attorneys are appointed by the State Bar of Nevada, one of whom is the Chairperson and one of whom is the Vice-Chair. The current Chairperson is Bill Hammer, Esq. (Hammer Resolutions) and the current Vice-Chair is Rob Martin, Esq. (Martin & Allison). The officers are appointed by the Commission on Judicial Discipline following nomination by the members of the Standing Committee. Twelve non-attorneys (lay members) were previously appointed by the Governor to sit on the Standing Committee for the purpose of resolving election practice disputes. In 2012, the Nevada Supreme Court removed the Standing Committee's jurisdiction to resolve election practice disputes. Consequently, the lay members were removed from the Standing Committee by amendment to the Supreme Court Rules, effective October 5, 2015. The members are appointed to two-year terms with a limit of no more than four consecutive full terms.

### **Advisory Opinions.**

#### **Process.**

The opinion process begins when a judge or candidate submits a written hypothetical request to the Executive Director. Legal research submitted by the judge is accepted and encouraged. The Chairperson decides whether to form a panel and if he/she does, the Standing Committee's staff contacts attorneys and judges to participate. Each panel must have one district judge and one limited jurisdiction judge, and six attorneys (including either the chair or vice-chair). Panel members discuss the ethical issue(s) via telephonic conference(s) and vote whether to issue an opinion or not and what the conclusion will be. The Chair or Vice-Chair drafts the opinion or assigns the task to another attorney member of the panel. Each panel member reviews the draft and provides input regarding the written product. The final opinion is signed by the panel Chair and then filed with the clerk of the Nevada Supreme Court. Final opinions are also posted permanently on the Standing Committee's website.

#### **Limitations.**

The Standing Committee shall not act on requests for opinions when any of the following circumstances exist:

1. There is a pending Nevada State Bar or Judicial Discipline Commission complaint, investigation, proceeding, or litigation concerning the subject of the request.
2. The request constitutes a complaint against a member of the judiciary.
3. The request involves procedures employed by the Judicial Discipline Commission in processing complaints against judges.
4. The request involves activities, the propriety of which depends principally on a question of law unrelated to judicial ethics.
5. Where it is known that the request involves a situation in litigation or concerns threatened litigation or involves the propriety of sanctions within the purview of the courts, such as contempt.
6. The Standing Committee has by majority vote determined that it would be inadvisable to respond to the request and has specified in writing its reasoning to the person who requested the opinion.

## **V. Standing Committee Action**

It should be noted that the website for the Judicial Discipline Commission also contains the website for the Standing Committee.

See <http://judicial.state.nv.us>. The Standing Committee portion of the website is divided into the following areas:

- a. Purpose of the Standing Committee
- b. Introduction to the Standing Committee
- c. Rules Governing the Standing Committee
- d. Revised Nevada Code of Judicial Conduct
- e. Advisory Opinions
- f. Advisory Opinions by Topic
- g. Committee Members and Staff
- h. Committee Openings

This portion of the website is an excellent reference for those who may have judicial ethics questions. The Revised Nevada Code of Judicial Conduct is set



forth in full as are all advisory opinions ever issued by the Standing Committee. The section on advisory opinions indexed by topic allows a person to narrow a search regarding an issue to a relevant area of interest. Because so much information has been provided on the website, it will not be repeated here in the interest of economy.

### **Fiscal Year 2016 - Advisory Opinions**

The Committee issued two (2) advisory opinions during FY 2016.

**JE15-003** May a judge participate in ex parte communications with a defendant or his or her counsel to negotiate an early case resolution of a misdemeanor traffic citation prior to the case going to trial?

**JE16-001** Whether a judge violates the Revised Code of Judicial Conduct when the judge accepts, considers, and acts upon documents received from the Division of Parole and Probation that are not served on the State or the defense.

### **Fiscal Year 2017 – Advisory Opinions**

The Committee issued 3 advisory opinions during FY 2017.

**JE16-002** May a judge participate in an awards program in which judges would nominate or vote for “best attorney” awards in a variety of categories?

**JE16-003** May a judge’s spouse accept contracts with either a state agency or an attorney who appears before the judge?

**JE16-004** May a Supreme Court Justice who is directly related to a Judge of the Court of Appeals that presided over an appeal participate in future proceedings of that case where the Supreme Court has vacated the decision of the Court of Appeals and granted *de novo* review of the District Court decision?

## **VI. Members of the Standing Committee on Judicial Ethics**

The members of the Standing Committee are a dedicated group of individuals who volunteer their time and answer important judicial ethics questions. Judges and judicial aspirants frequently request informal and formal



guidance in the form of requests for advisory opinions. The names of the Standing Committee members are listed here.

### **Judicial Members**

Honorable Abbi Silver  
Court of Appeals

Honorable Jim Wilson  
First Judicial District Court

Honorable Bryce Duckworth  
Eighth Judicial District Court

Honorable Nancy Allf  
Eighth Judicial District Court

Honorable Mason E. Simons  
Elko Township Justice Court

Honorable Melissa Saragosa  
Las Vegas Justice Court

### **Attorney Members**

Bill C. Hammer, Esq., Chair  
Hammer and Associates

Robert Martin, Esq., Vice Chair  
Martin & Allison

John C. Funk, Esq.  
Gerald I. Gillock & Associates

Rhonda Long, Esq.  
McCulloch, Dobberstein & Evans

Christopher Cannon, Esq.  
Olson Cannon Gormely Angulo  
& Stoberski

Patricia Halstead, Esq.  
Halstead Law Offices

Paul Connaghan, Esq.  
Connaghan Newberry Law Firm

Jennifer Noble, Esq.  
Washoe County District Attorney's Office

Frank Toddre, II, Esq.  
Nevada Attorney General's Office

Kelly Dove, Esq.  
Snell & Willmer

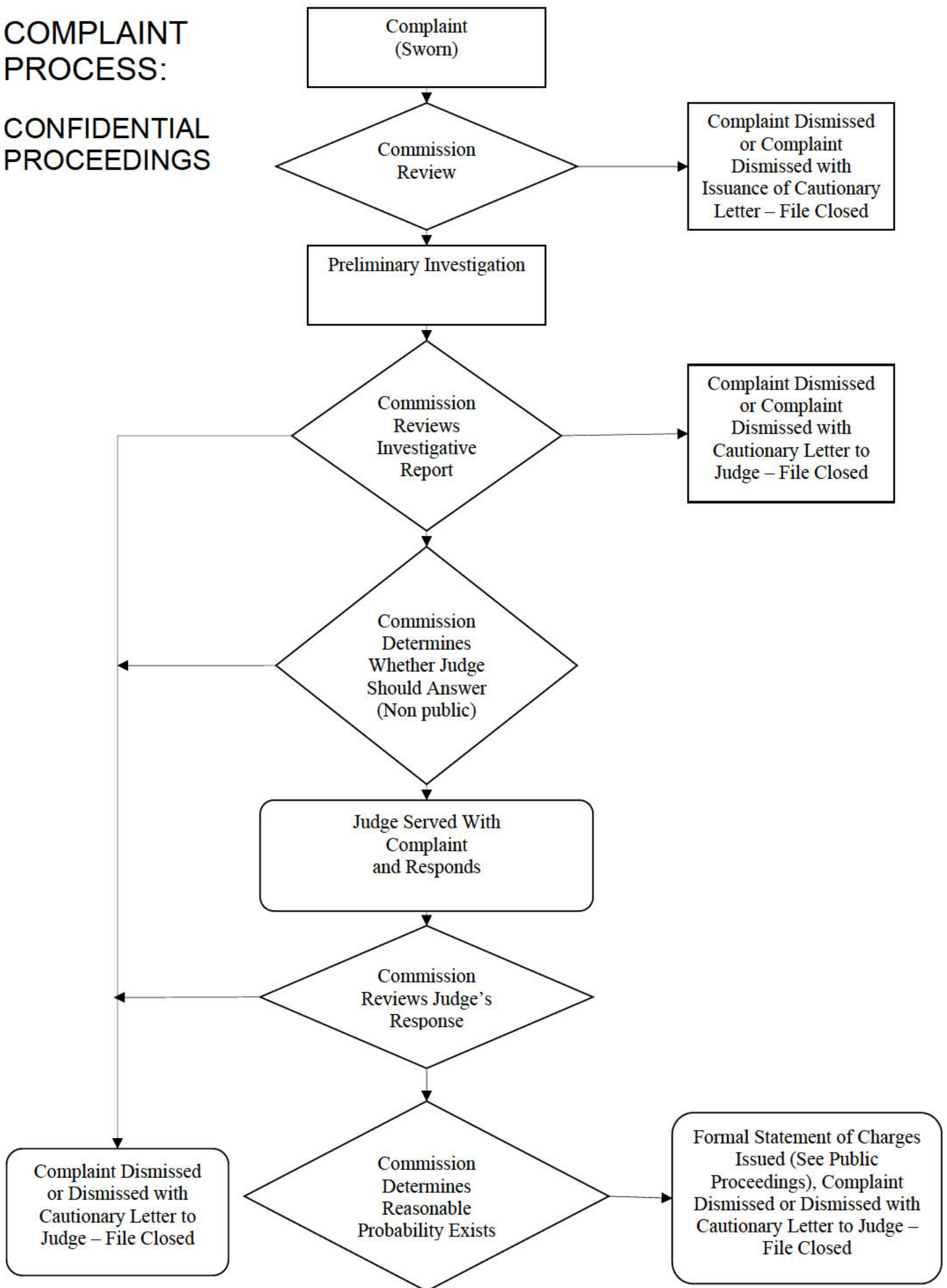
Cassandra Jones, Esq.  
Heritage Law Group

Michael Bohn, Esq.  
Michael F. Bohn, Esq., Ltd.

APPENDIX A

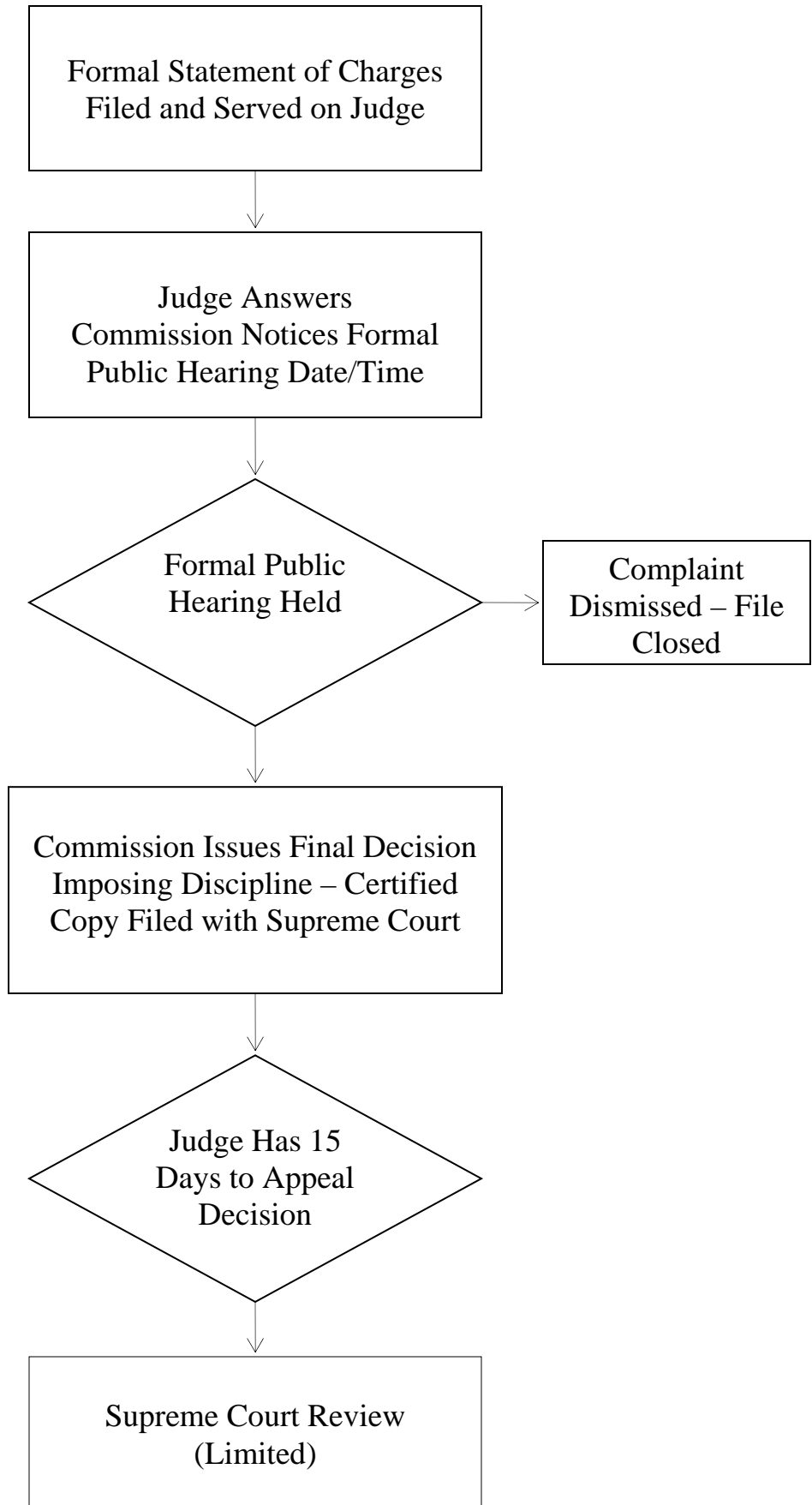
# COMPLAINT PROCESS:

## CONFIDENTIAL PROCEEDINGS

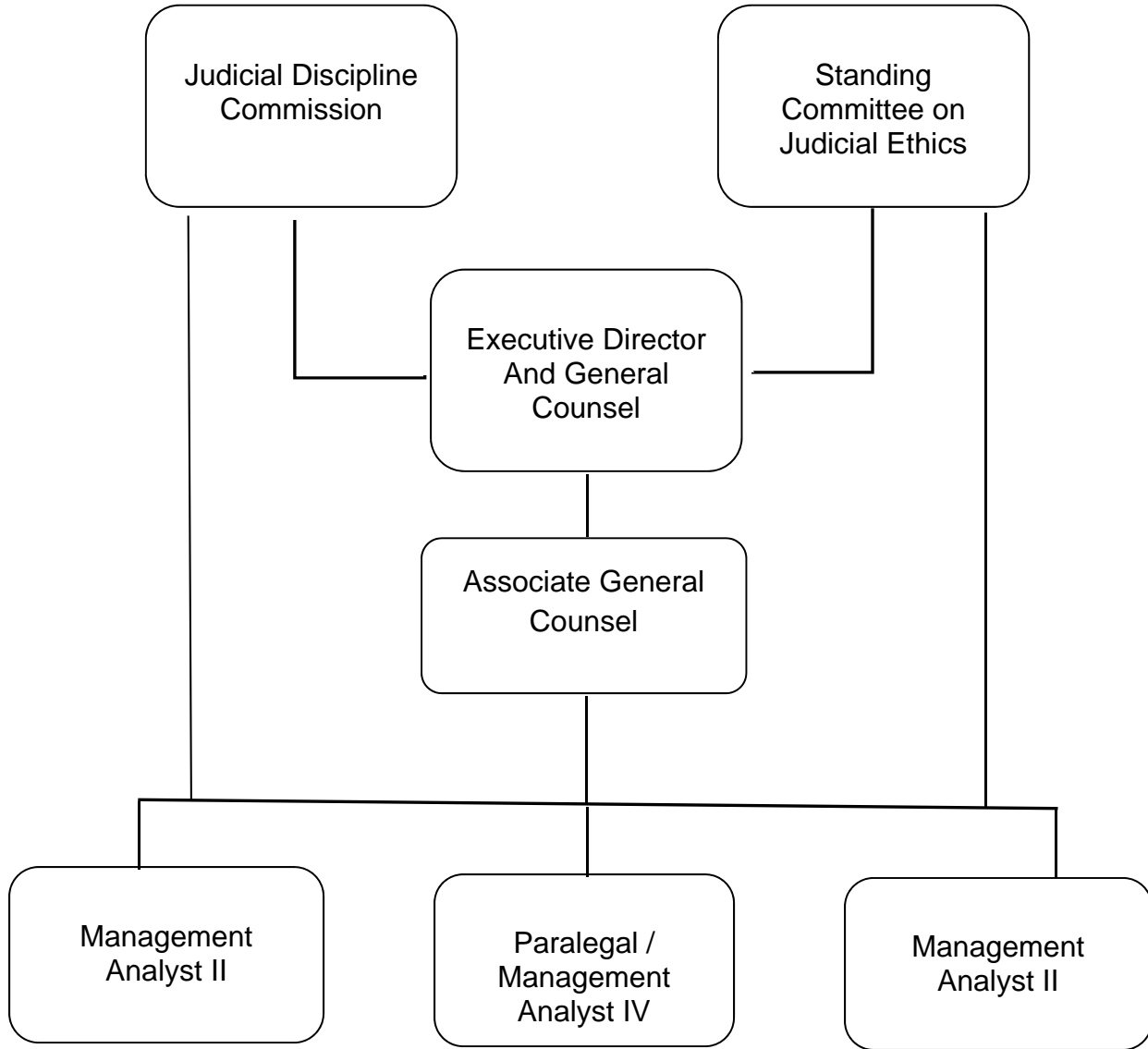


**COMPLAINT  
PROCESS:**

**FORMAL  
PUBLIC  
PROCEEDINGS**



# ORGANIZATIONAL CHART



APPENDIX B

**CASE DISPOSITIONS  
FISCAL YEAR 2016**

<b>Disposition</b>	<b>Number</b>
Dismissed after initial review	127
Dismissed after investigation - no action taken	12
Dismissed with cautionary letter*	15
Proceed to Formal Statement of Charges	9
Informal discipline <sup>1</sup>	0
Public charges dismissed	1
Public reprimand*	3
Public censure	0
Suspension <sup>2</sup>	0
Removal/Barred from holding judicial office	1
Resignation	1
<b>Total</b>	<b>169</b>

\*Includes consolidated matters

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<sup>1</sup>Includes private reprimand or deferred discipline agreement

<sup>2</sup>Includes suspension with and without pay

**CASE DISPOSITIONS<sup>1</sup>**  
**FISCAL YEAR 2017**

Disposition	Number
Dismissed after initial review	151
Proceed to Investigation	23
Dismissed after investigation - no action taken	3
Dismissed with cautionary letter*	14
Proceed to Formal Statement of Charges	3
Informal discipline <sup>2</sup>	0
Public charges dismissed	0
Public reprimand*	5
Public censure	1
Psychiatric Evaluation	1
Written Apologies	1
Fine	1
Education/Training	1
Suspension <sup>3</sup>	2
Removal/Barred from holding judicial office	0
Resignation	0
Total	206

\*Includes consolidated matters

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<sup>1</sup>Case dispositions do not represent the number of complaints filed with the Commission in any given fiscal year. Rather, they indicate the actions taken by the Commission at the various stages of the judicial discipline process.

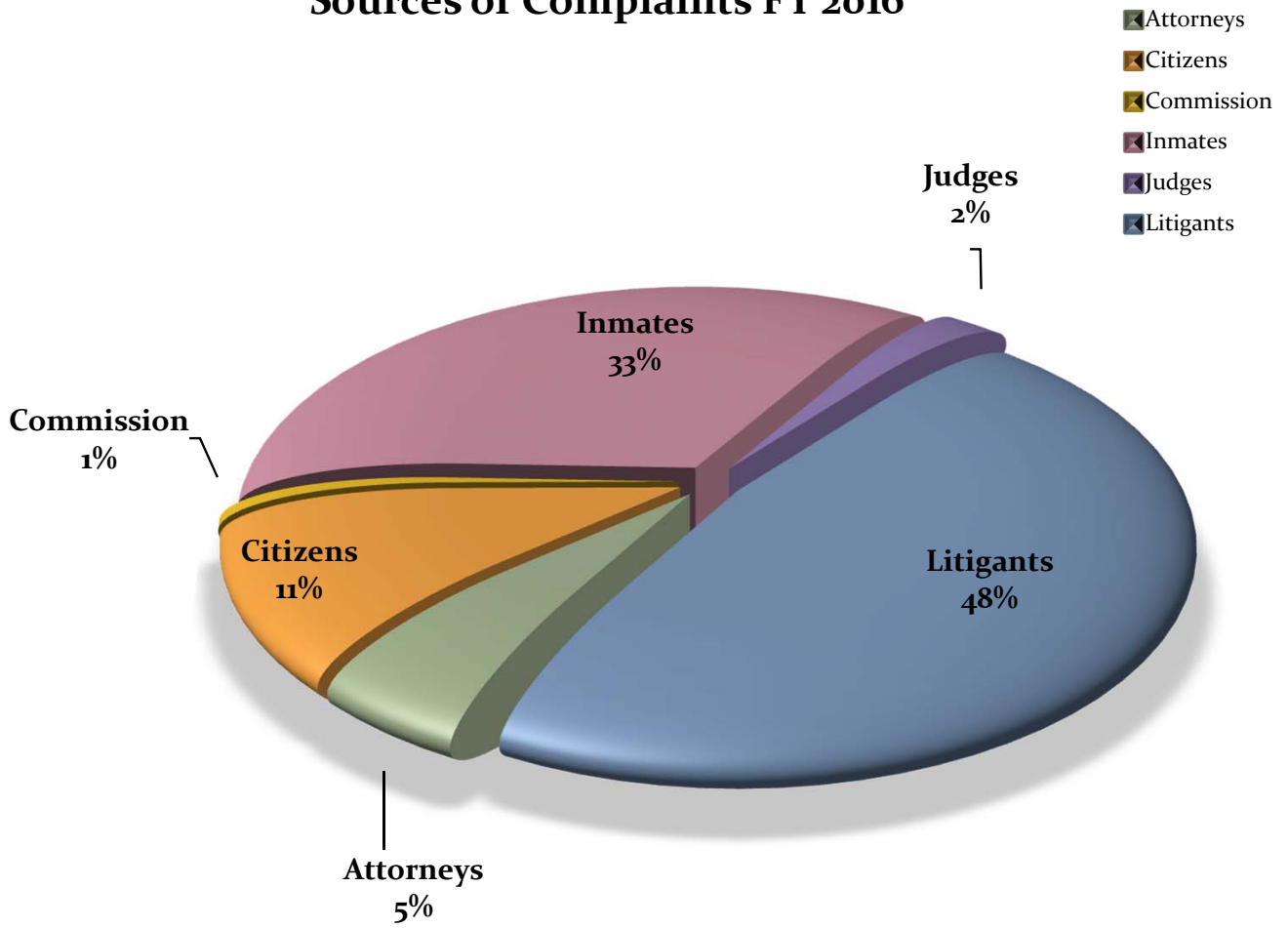
<sup>2</sup>Includes private reprimand or deferred discipline agreement

<sup>3</sup>Includes suspension with and without pay



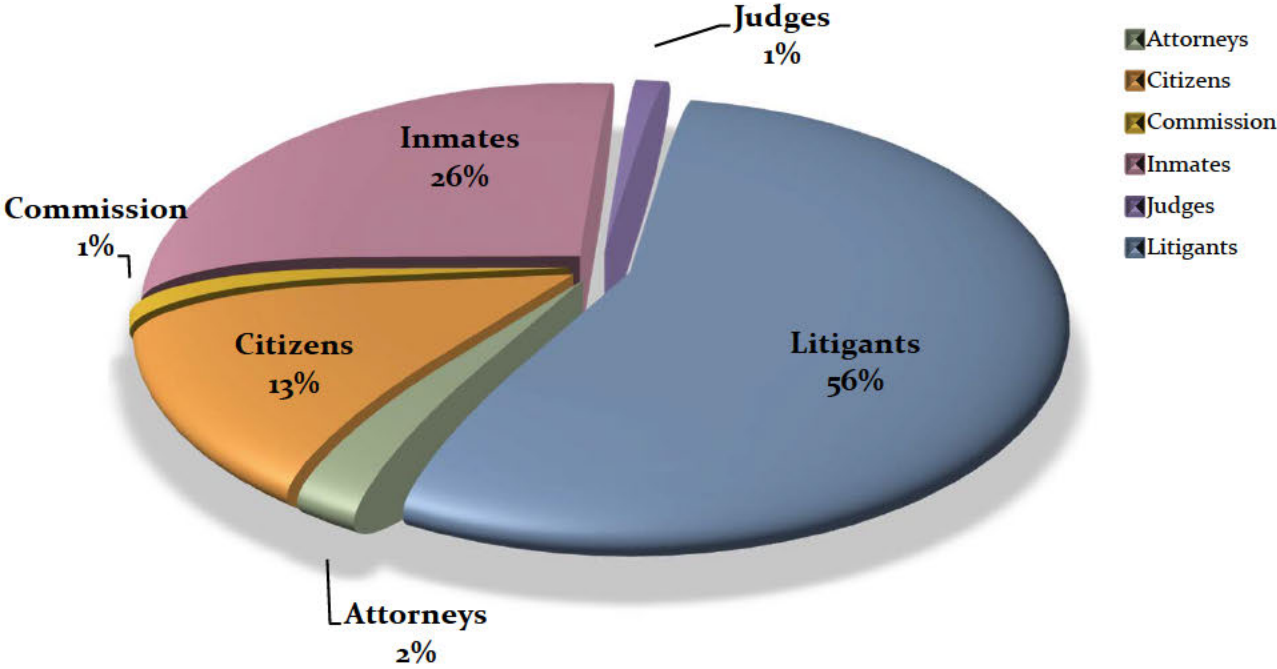
Category	Amount
Attorneys	8
Citizens	16
Commission	1
Inmates	48
Judges	3
Litigants	69
<b>Total</b>	<b>145</b>

### Sources of Complaints FY 2016



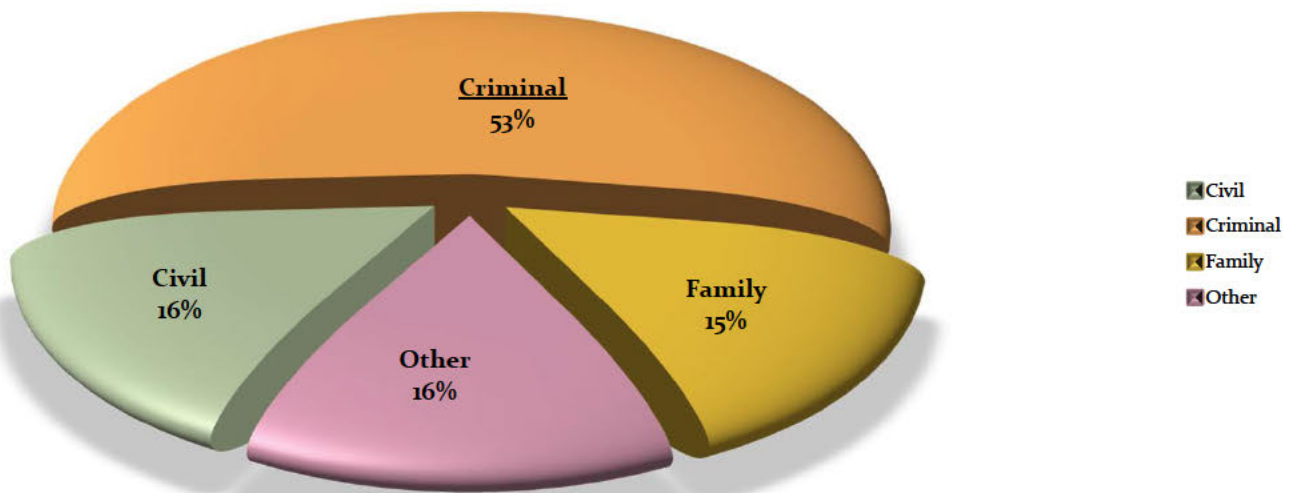
Category	Amount
Attorneys	4
Citizens	21
Commission	2
Inmates	43
Judges	2
Litigants	91
<b>Total</b>	<b>163</b>

### Sources of Complaints FY 2017



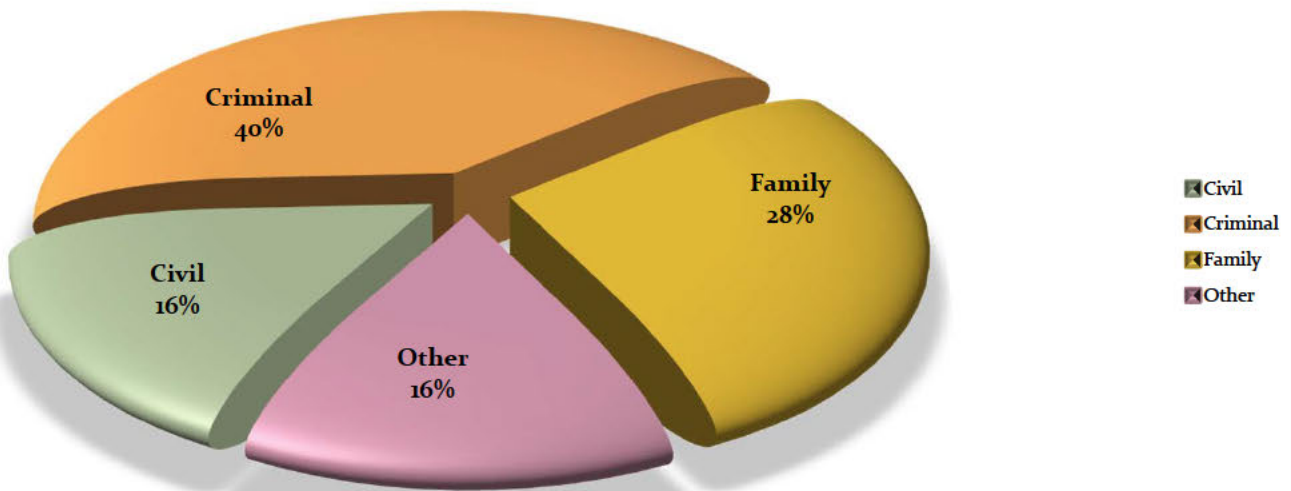
Category	Number of Complaints
Civil	23
Criminal	77
Family	22
Other	23
<b>Total</b>	<b>145</b>

### Types of Courts - Complaint Origination FY 2016



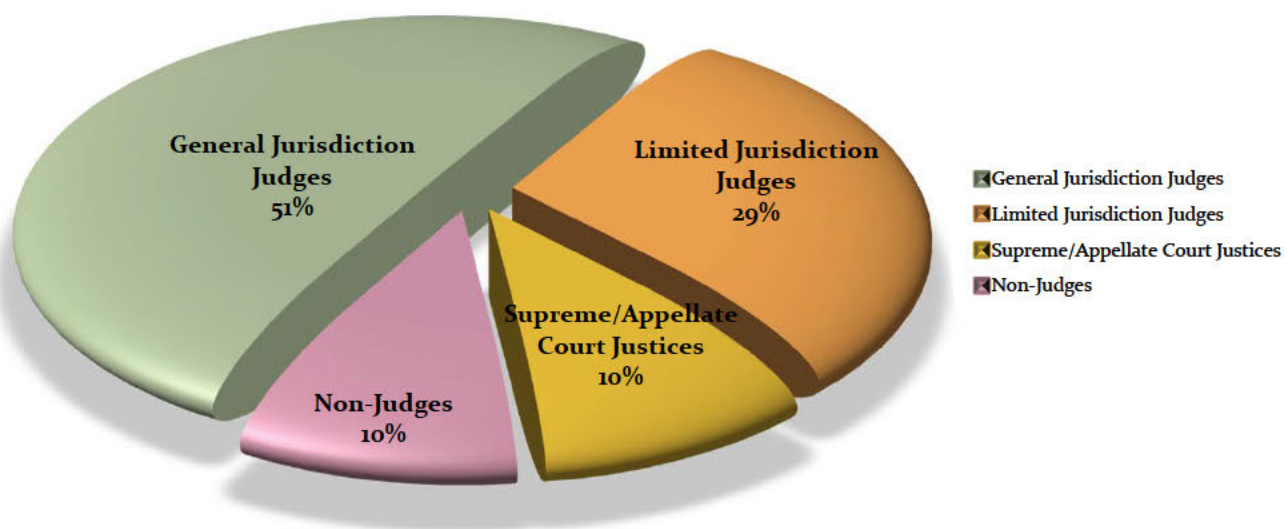
Category	Number of Complaints
Civil	26
Criminal	65
Family	46
Other	26
<b>Total</b>	<b>163</b>

### Types of Courts - Complaint Origination FY 2017



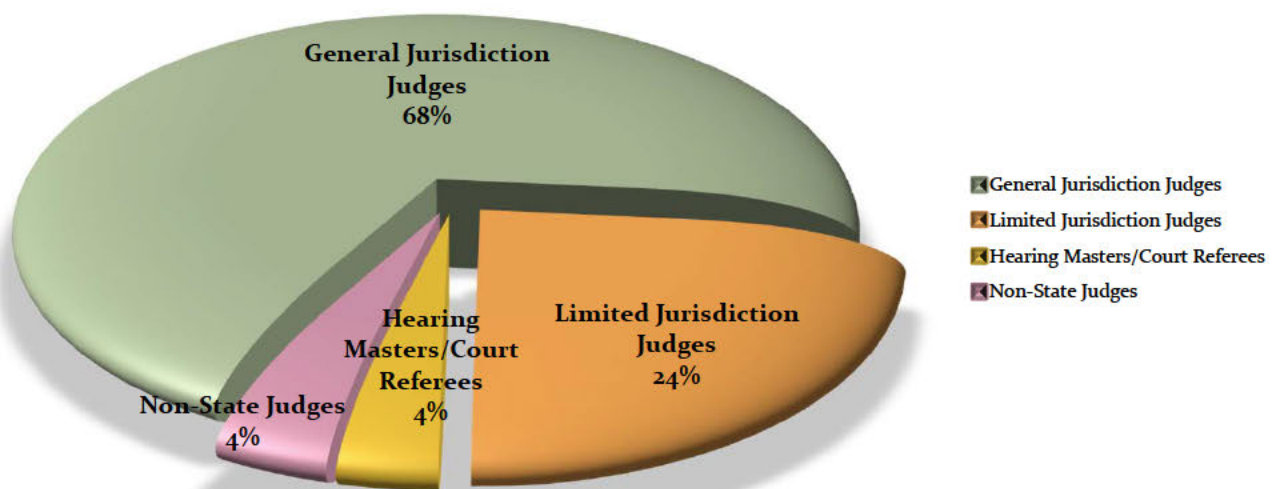
Category	Number of Complaints
General Jurisdiction Judges	73
Limited Jurisdiction Judges	42
Supreme/Appellate Court Justices	15
Non-Judges	15
<b>Total</b>	<b>145</b>

### Types of Judges Complained Against FY 2016



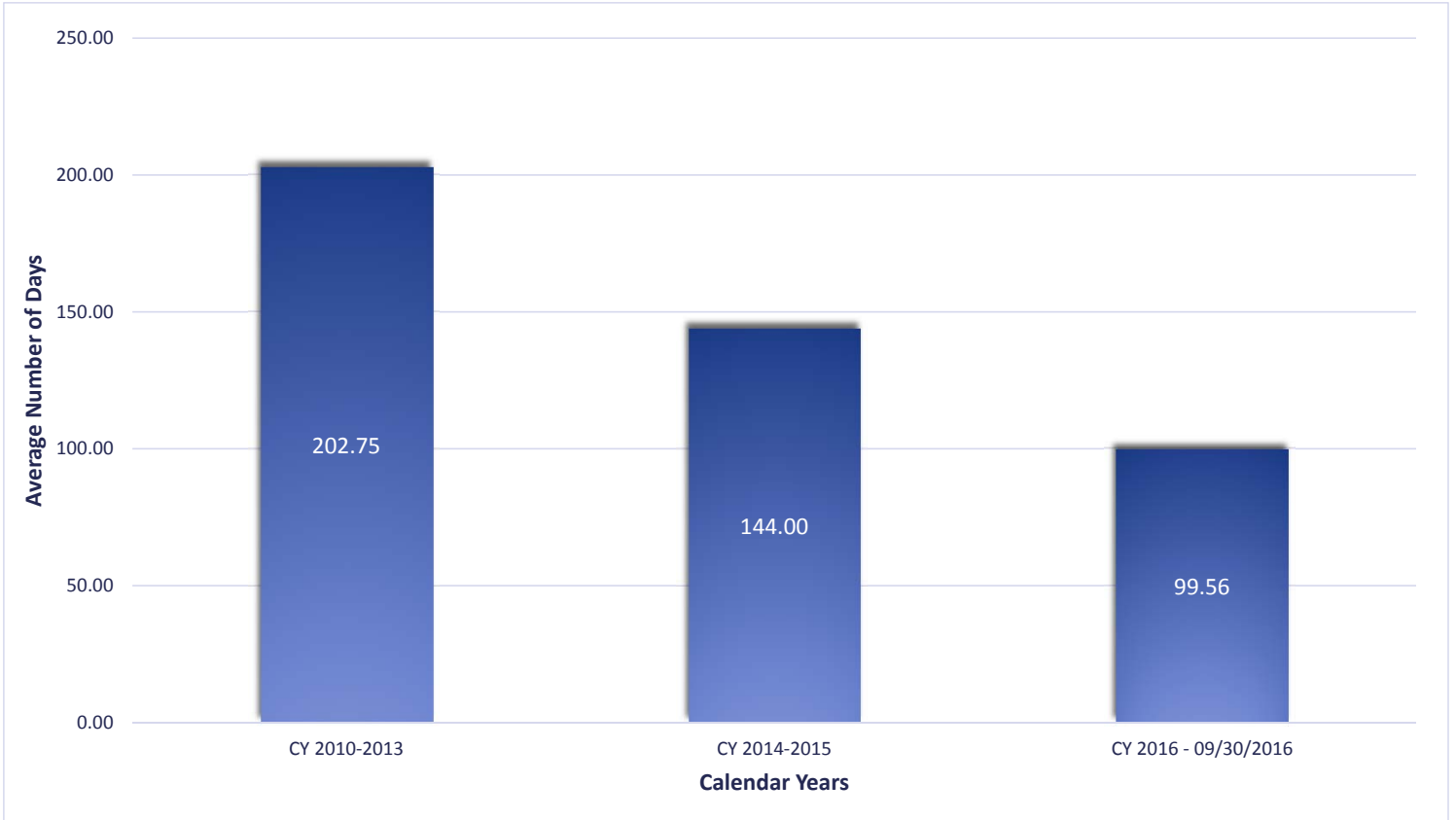
Category	Number of Complaints
General Jurisdiction Judges	111
Limited Jurisdiction Judges	39
Hearing Masters/Court Referees	6
Non-State Judges	7
<b>Total</b>	<b>163</b>

### Types of Judges Complained Against FY 2017

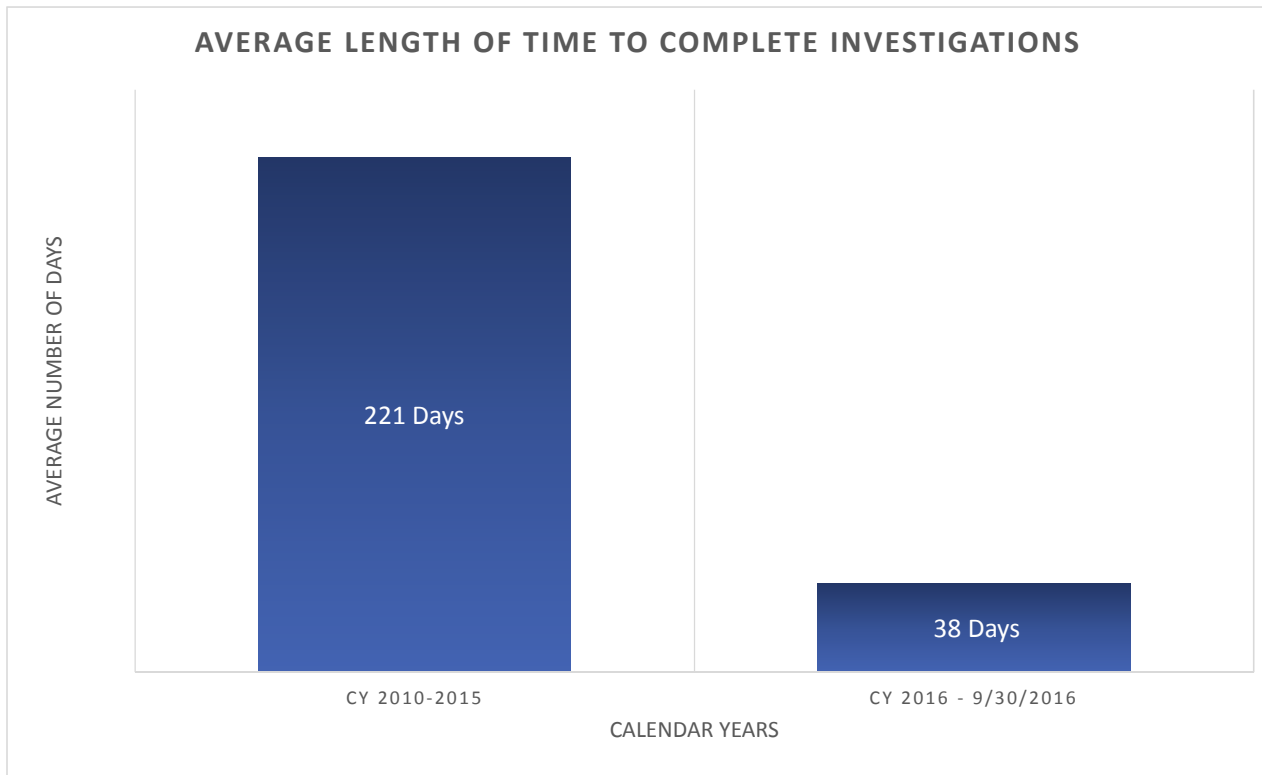


Category	Amount
CY 2010-2013	202.75
CY 2014-2015	144.00
CY 2016 - 09/30/2016	99.56

### Average Case Duration

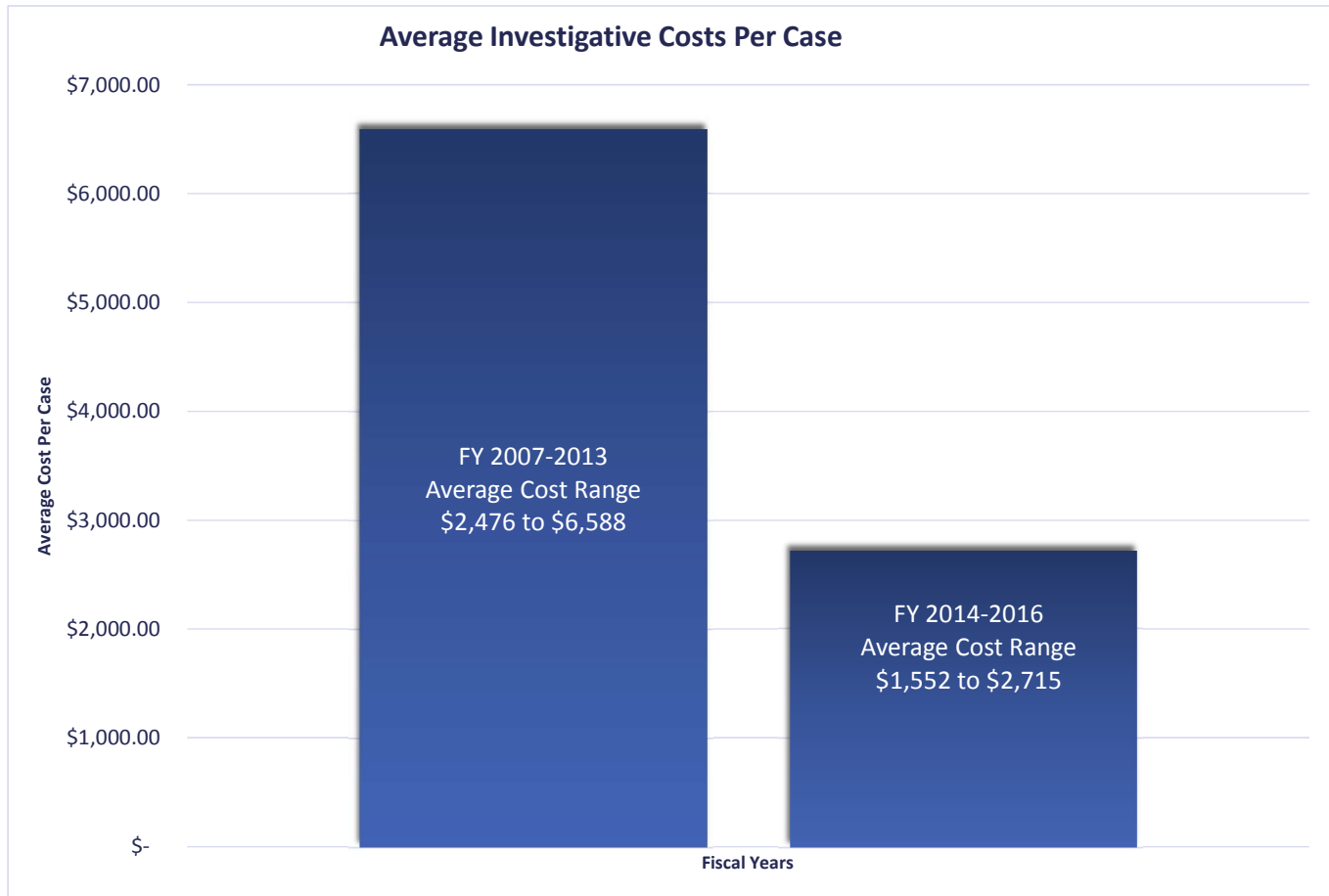


Category	Amount
CY 2010-2015	221
CY 2016 - 9/30/2016	38





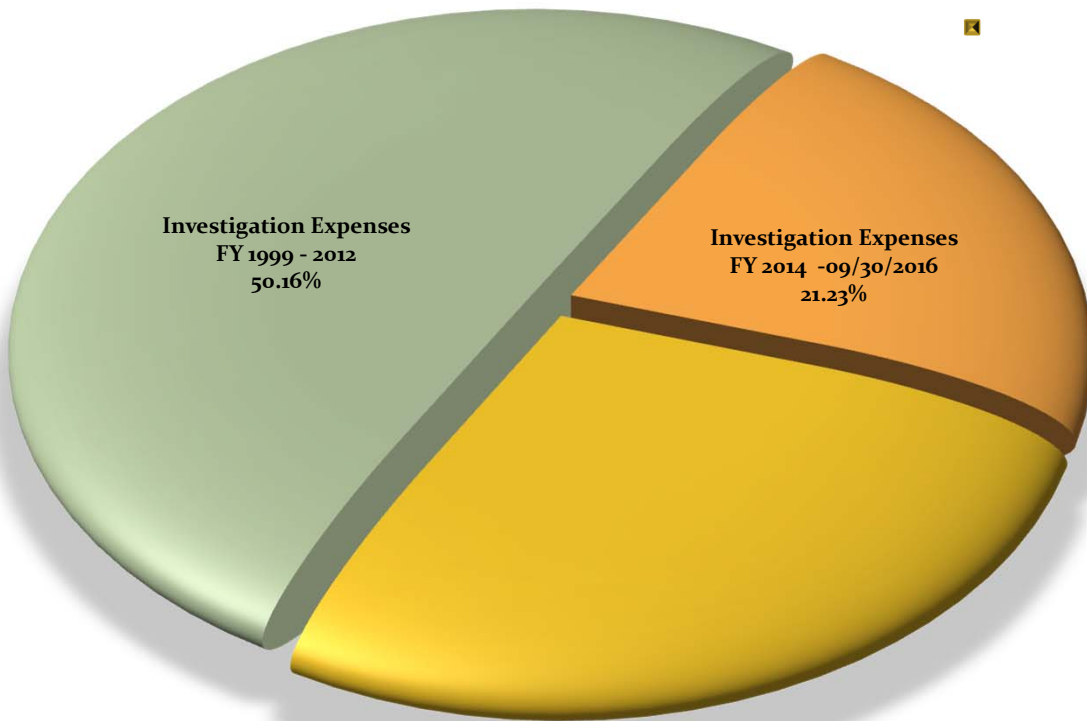
Category	Avg. Investigative Costs
FY 2007-2013 higher range	\$ 6,588.00
FY 2014-2016 higher range	\$ 2,715.00



Category	Amount
Investigation Expenses FY 1999 - 2012	50.16%
Investigation Expenses FY 2014 -09/30/2016	21.23%
	28.61%
Total	100.00%

**Average Percentage of Operating Budget  
Expended on Investigations  
1999 - 2012 and 2014 - 09/30/2016**

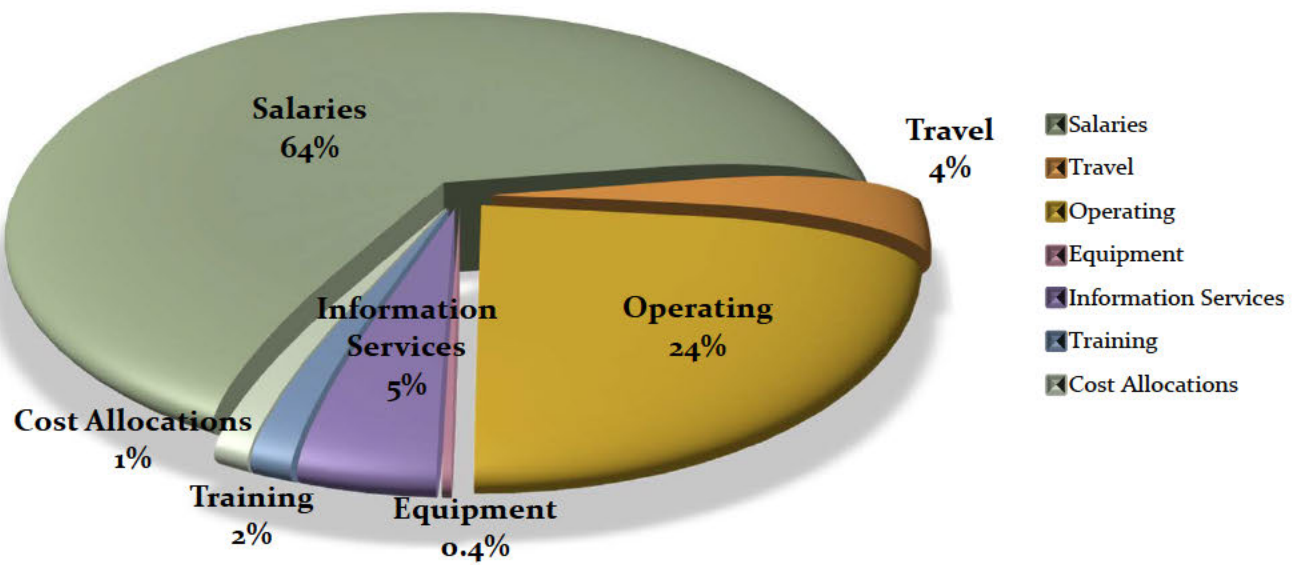
- Investigation Expenses FY 1999 - 2012
- Investigation Expenses FY 2014 -09/30/2016
- 



APPENDIX C

Category	Amount
Salaries	\$ 560,921
Travel	\$ 34,510
Operating	\$ 206,464
Equipment	\$ 2,970
Information Services	\$ 42,664
Training	\$ 13,230
Cost Allocations	\$ 11,407
<b>Total</b>	<b>\$ 872,166</b>

### Commission Budget Legislatively Approved FY 2016



Category	Amount
Salaries	\$ 593,709
Travel	\$ 33,526
Operating	\$ 172,143
Information Services	\$ 10,869
Training	\$ 2,581
Cost Allocations	\$ 11,909
<b>Total</b>	<b>\$ 824,737</b>

### Commission Budget Legislatively Approved FY 2017

