

# NEVADA COMMISSION ON JUDICIAL DISCIPLINE

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## STANDING COMMITTEE ON JUDICIAL ETHICS



2018-2019 BIENNIAL REPORT

## FY 2018 – FY 2019 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.

Also included in this report is 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.nv.gov/>, 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 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 2019

## **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), Vice-Chair Stefanie Humphrey (Republican, Carson City), John Krmpotic (Republican, Washoe County) and Joseph Sanford (alternate) (Democrat, Lyon 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 Mark Denton (Eighth Judicial District, Clark County), Jerome Polaha (Second Judicial District, Washoe County), Thomas Gregory (alternate) (Ninth Judicial District, Douglas County) and Thomas Stockard (alternate) (Tenth Judicial District, Churchill County). Justice Court alternate members are Karen Bennett-Haron (Las Vegas Justice Court) and Stephen J. Bishop (Ely Township Justice Court). Municipal court alternate members are Thomas Armstrong (Carson City Justice/Municipal Court), Martin Hastings (Las Vegas Township), Dorothy Nash Holmes (Reno Municipal Court) and Mason Simons (Elko 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 Laurence 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 authorize 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 October 2017, the Commission filed its Formal Statement of Charges against the Honorable Rena G. Hughes, District Court Judge, Eighth Judicial District Court. On June 18, 2018, 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, 2.5(A) and 2.6(A), for which Judge Hughes was publicly reprimanded and ordered to attend a National Judicial College course at her own expense. On June 21, 2018, Judge Hughes filed a Notice of Appeal which is currently pending before the Nevada Supreme Court.

In January 2018, the Commission filed its Formal Statement of Charges against the Honorable Charles Weller, District Court Judge, Second Judicial District Court. On September 20, 2018, 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, for which Judge Weller was publicly reprimanded and ordered to successfully attend a judicial education course at his own expense, ordered to pay a two thousand five hundred dollar (\$2,500) fine to the Domestic Violence Resource Center, and ordered to send written letters of apology to five (5) individuals who witnessed the misconduct. On September 28, 2018, Judge Weller filed a Notice of Appeal which is currently pending before the Nevada Supreme Court.

### **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<sup>1</sup>**

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 March 2017, the Commission filed its Formal Statement of Charges against the Honorable William S. Potter, District Court Judge, Eighth Judicial District Court. On November 22, 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; Canon 2, Rules 2.1, 2.2, 2.9 and 2.10; Canon 3, Rule 3.5; and Canon 4, Rule 4.2(A)(1), for which Judge Potter

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<sup>1</sup> In certain previously issued Commission Reports, a formal proceeding involving the Honorable Ann E. Zimmerman was inadvertently omitted. In July 2015, the Commission filed its Formal Statement of Charges against the Honorable Ann E. Zimmerman, Justice of the Peace, Las Vegas Township, for alleged violations of Canon 2, Rules 2.2, 2.6, 2.9 and 2.16. In June 2016, the Commission filed its Order Granting Respondent's Motion to Dismiss Formal Statement of Charges and Judicial Complaint. The Formal Statement of Charges was dismissed, not on the merits, but rather for failure of the complainant to timely file the complaint against Judge Zimmerman in violation of the applicable statute of limitations period.

was publicly reprimanded and ordered suspended without pay for sixty (60) days, ordered to attend a judicial education course at his own expense, ordered to send two (2) written letters of apology to aggrieved parties, ordered to perform ten (10) hours of community service with an anti-bullying organization, ordered to pay a \$5,000 fine to an organization that supports anti-bullying programs in Southern Nevada, and ordered to submit to a psychiatric exam at his own expense and comply with any recommendations provided in the evaluation.

In May 2017, the Commission filed its Formal Statement of Charges against the Honorable William Kephart, District Court Judge, Eighth Judicial District Court. The Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on August 31, 2017, in which Judge Kephart admitted that he committed violations of Canon 1, Rule 1.1 and 1.2; and Canon 2, Rules 2.5(A) and 2.10, and accepted the Commission's public reprimand.

In October 2017, the Commission filed its Formal Statement of Charges against the Honorable Jennifer Henry, Hearing Master, Eighth Judicial District Court, alleging violations of Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.2, 2.3, 2.5(A), 2.6(A) and 2.8(B). In April 2017, Hearing Master Henry Filed a Petition for Writ of Prohibition with the Nevada Supreme Court. In May 2018, the Nevada Supreme Court issued a stay and the matter was temporarily postponed. In February 2019, the Nevada Supreme Court denied Hearing Master Henry's Petition for Writ of Prohibition and lifted the stay. The matter has been set for a hearing in early fiscal year 20.

In October 2017, the Commission filed its Formal Statement of Charges against the Honorable Rena G. Hughes, District Court Judge, Eighth Judicial District Court. On June 18, 2018, 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, 2.5(A) and 2.6(A), for which Judge Hughes was publicly reprimanded and ordered to attend a National Judicial College course at her own expense. On June 21, 2018, Judge Hughes filed a Notice of Appeal which is currently pending before the Nevada Supreme Court.

In January 2018, the Commission filed its Formal Statement of Charges against the Honorable William Gus Sullivan, Justice of the Peace, Pahrump Township Justice Court. The Commission entered into a Stipulation and Order of Consent to Public Reprimand filed on February 23, 2018, in which Judge Sullivan admitted that he committed violations of Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.2, 2.3(A) and (B), 2.4, 2.5(A), 2.6(A), 2.9(A) and (C) and 2.12, and accepted the Commission's public reprimand.

In January 2018, the Commission filed its Formal Statement of Charges against the Honorable David Humke, District Court Judge, Second Judicial District Court. The Commission entered into a Stipulation and Order of Consent to Discipline filed on June 8, 2018, in which Judge Humke admitted that he committed violations of Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.5(A) and (B), 2.12(A) and 2.16, and accepted the Commission's public censure which ordered Judge Humke to be suspended without pay for three (3) months, to complete a National Judicial College course at his own expense, and to pay a one thousand dollar (\$1,000) fine to an appropriate law related charity.

In January 2018, the Commission filed its Formal Statement of Charges against the Honorable Charles Weller, District Court Judge, Second Judicial District Court. On September 20, 2018, 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, for which Judge Weller was publicly reprimanded and ordered to successfully attend a judicial education course at his own expense, ordered to pay a two thousand five hundred dollar (\$2,500) fine to the Domestic Violence Resource Center, and ordered to send written letters of apology to five (5) individuals who witnessed the misconduct. On September 28, 2018, Judge Weller filed a Notice of Appeal which is currently pending before the Nevada Supreme Court.

In January 2018, the Commission filed its Formal Statement of Charges against the Honorable Jay T. Gunter, Justice of the Peace, Hawthorne Township Justice Court. The Commission entered into a Stipulation and Order of Consent to a Public Censure and Agreement to Complete a National Judicial College Course filed on May 18, 2018, in which Judge Gunter admitted that he committed violations of Canon 1, Rule 1.1 and Canon 2, Rules 2.5(A) and 2.12(A), and accepted the Commission's public censure which ordered Judge Gunter to complete a National Judicial College course.

In April 2018, the Commission filed its Formal Statement of Charges against Heidi Almase, former Municipal Court Judge, City of Las Vegas. On October 22, 2018, 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 4, Rules 4.1(B) and 4.4 (A) for which Judge Almase was publicly reprimanded.

In April 2018, the Commission filed its Formal Statement of Charges against the Honorable Douglas E. Smith, District Court Judge, Eighth Judicial District Court. The Commission entered into a Stipulation and Order of Consent to Discipline filed on July 26, 2018, in which Judge Smith admitted that he committed violations of

Canon 1, Rule 1.1 and 1.2; and Canon 2, Rules 2.2, 2.3(B), 2.5(A), 2.8(B) and 2.16(A), and accepted the Commission's public censure which ordered Judge Smith to complete a National Judicial College course at his own expense and pay a fine in the amount of fifteen hundred dollars (\$1,500) to an appropriate law-related charity.

In July 2018, the Commission filed its Formal Statement of Charges against the Honorable Martin Hastings, Municipal Court Judge, City of Las Vegas. On March 6, 2019, 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 2.5(B) and 2.7, for which Judge Hastings was publicly censured and ordered to successfully attend a judicial education course at his own expense and ordered to complete a six (6)-month probationary period.

In December 2018, the Honorable Melanie Andres-Tobiasson, Justice of the Peace, Las Vegas Township Justice Court, filed a Petition for Writ of Prohibition with the Nevada Supreme Court. At the time, the Commission had not filed a Formal Statement of Charges against her; however, the case was under investigation. By Order dated May 10, 2019 (Case No. 77551), the Nevada Supreme Court lifted its stay of the judicial discipline proceedings in this matter and the investigation is pending.

In January 2019, the Commission entered into a Stipulation and Order of Consent to Discipline regarding the Honorable David Humke, District Court Judge, Second Judicial District Court. Judge Humke agreed to voluntarily resign from his judicial office and be barred from serving in judicial office in the future for violating Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.5(A) and (B), 2.6(A), 2.7, 2.8(B) and 2.12(A).

### **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") 2018 and 2019, 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 17 letters of caution during FY 2018.

- 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 compliance with the law.
- 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 due diligence.
- The Commission issued a cautionary letter to a justice 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 maintaining proper decorum in the court room.
- 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.
- 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 justice court judge regarding compliance with the law.
- The Commission issued a cautionary letter to a justice court judge regarding compliance with the law.
- 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 and out of the court room.
- The Commission issued a cautionary letter to a justice court judge regarding timeliness of rulings.
- 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 avoiding abuse of the prestige of judicial office.

The Commission also issued 9 letters of caution during FY 2019.

- 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 the appearance of impartiality.
- The Commission issued a cautionary letter to a district court judge regarding due diligence and compliance with the law.
- The Commission issued a cautionary letter to a district court judge regarding timeliness of rulings.
- The Commission issued a cautionary letter to an appellate judge regarding maintaining the appearance of impartiality.
- 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 district court judge regarding maintaining proper decorum and demeanor in the court room
- The Commission issued a cautionary letter to a district court judge regarding maintaining proper decorum and demeanor in the court room and timeliness of rulings

### **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 2018 and FY 2019 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. Currently, there are 7 Supreme Court Justices, 3 Court of Appeals judges, 82 district court judges, 67 justices of the peace and 30 municipal court judges (9 of which also serve as Justices of the Peace). Additional judicial officers include senior justices and judges (61), part-time judges (190), and numerous hearing/special masters, commissioners and referees.

During FY 2018, the Commission received 242 new complaints, considered 19 requests for reconsideration, authorized 15 investigations, initiated 8 public cases and completed 257 cases. The Commission's number of open cases as of June 30, 2018 (end of FY 2018) was 36. As of September 30, 2018, the date of publication of the 2018 Annual Report, the number of open cases was 76, most of which were considered by the Commission at its quarterly meeting held in October 2018. For FY 2018, the average case duration<sup>2</sup> was 88 days, the average length of time to complete investigations was 69 days, the percentage of operating budget expended on investigations was 12%, and the total number of disciplinary decisions imposed was 7.

During FY 2019, the Commission received 197 new complaints, considered 13 requests for reconsideration, authorized 11 investigations, initiated 3 public cases and completed 196 cases. The Commission's number of open cases as of June 30, 2019 (end of FY 2019) was 37. As of September 27, 2019, the date of publication of this Biennial Report, the number of open cases was 91, most of which will be considered by the Commission at its quarterly meeting to be held in October 2019. For FY 2019, the average case duration was 95 days, the average length of time to complete investigations was 76 days, the percentage of operating budget expended on investigations was 20%, and the total number of disciplinary decisions imposed was 5.

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<sup>2</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.

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 93 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 \$906,100 for FY 2018. This amount includes \$184,659 in operating funds. The Commission's total expenditures were \$849,711 allowing \$56,389 to be reverted to the General Fund.

The Legislature approved a budget of \$930,336 for FY 2019. This amount includes \$193,953 in operating funds. However, during the 2019 Legislative Session, the Commission had to request a Supplemental Appropriation due to its case load and projected case related expenses. The Legislature approved additional funding in the amount of \$48,897. The Commission's total expenditures were \$914,865 allowing \$65,368 to be reverted to the General Fund.

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.

See Appendix C for organizational and budget charts.

### **Current Litigation**

None.

**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 Thomas Armstrong
Stefanie Humphrey, Vice-Chair	Honorable Karen Bennett-Haron
John Krmptic	Honorable Stephen J. Bishop
Honorable Mark R. Denton	Honorable Thomas Gregory
Honorable Jerome Polaha	Honorable Martin Hastings
Karl Armstrong, Esq.	Honorable Dorothy Nash Holmes
Bruce Hahn, Esq.	Honorable Mason E. Simons
	Honorable Thomas K. Stockard
	Donald Christensen, Esq.
	Laurence Irwin, Esq.
	Joseph Sanford

**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 Patricia Halstead (Halstead Law Offices). 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.nv.gov/>. 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 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 2018 - Advisory Opinions

The Committee issued 2 advisory opinions during FY 2018.

**JE17-002** May a recently appointed judge, after being sworn as a judge, abide by the terms of the former law firm's partnership agreement and accept payments for vested equity units in the partnership over a four-year installment payout?

**JE17-003** May a pro tempore/alternate judge serve concurrently as a volunteer member of the State Bar of Nevada's Standing Committee on Professional Responsibility and Ethics?

The Committee did not receive any requests in FY 2019 that required the Committee to issue a new advisory opinion.

## 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 Nancy Allf  
Eighth Judicial District Court

Honorable Melissa Saragosa  
Las Vegas Justice Court

Honorable Scott Freeman  
Second Judicial District Court

Honorable Mason E. Simons  
Elko Township Justice Court

Honorable Scott E. Pearson  
Reno Justice Court

Honorable Jim Wilson  
First Judicial District Court

**Attorney Members**

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

Patricia Halstead, Esq., Vice Chair  
Halstead Law Offices

Audrey Beeson, Esq.  
Law Offices of Frank Toti & Audrey  
Beeson

Patrick Chapin  
Patrick Chapin, Ltd.

Kevin Benson  
Benson Law, LLC

Paul Connaghan, Esq.  
Connaghan Law Firm

Susan Bush  
Clark County

Kelly Dove, Esq.  
Snell & Willmer

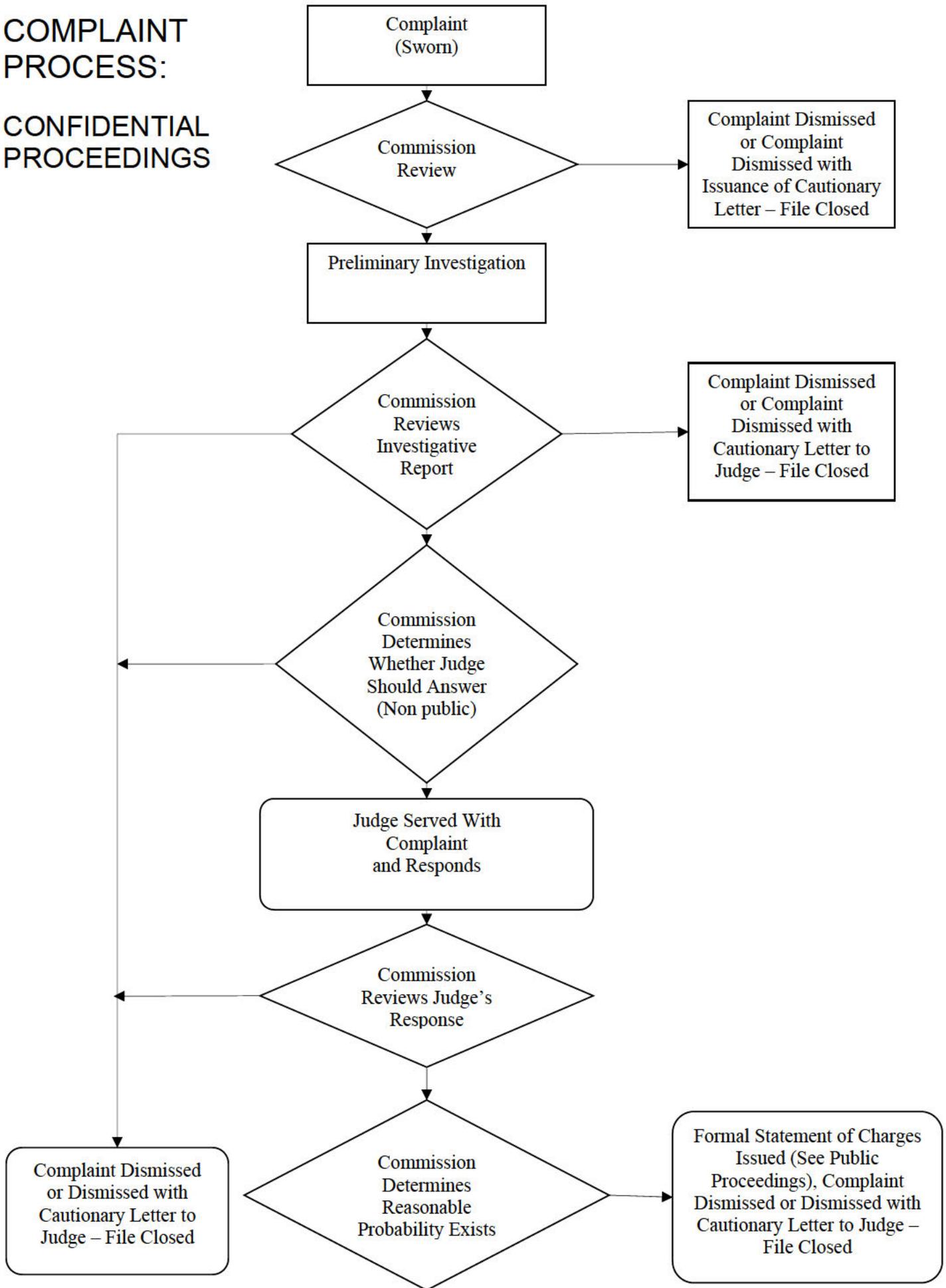
Christopher Cannon, Esq.  
Olson Cannon Gormely Angulo  
& Stoberski

John C. Funk, Esq.

APPENDIX A

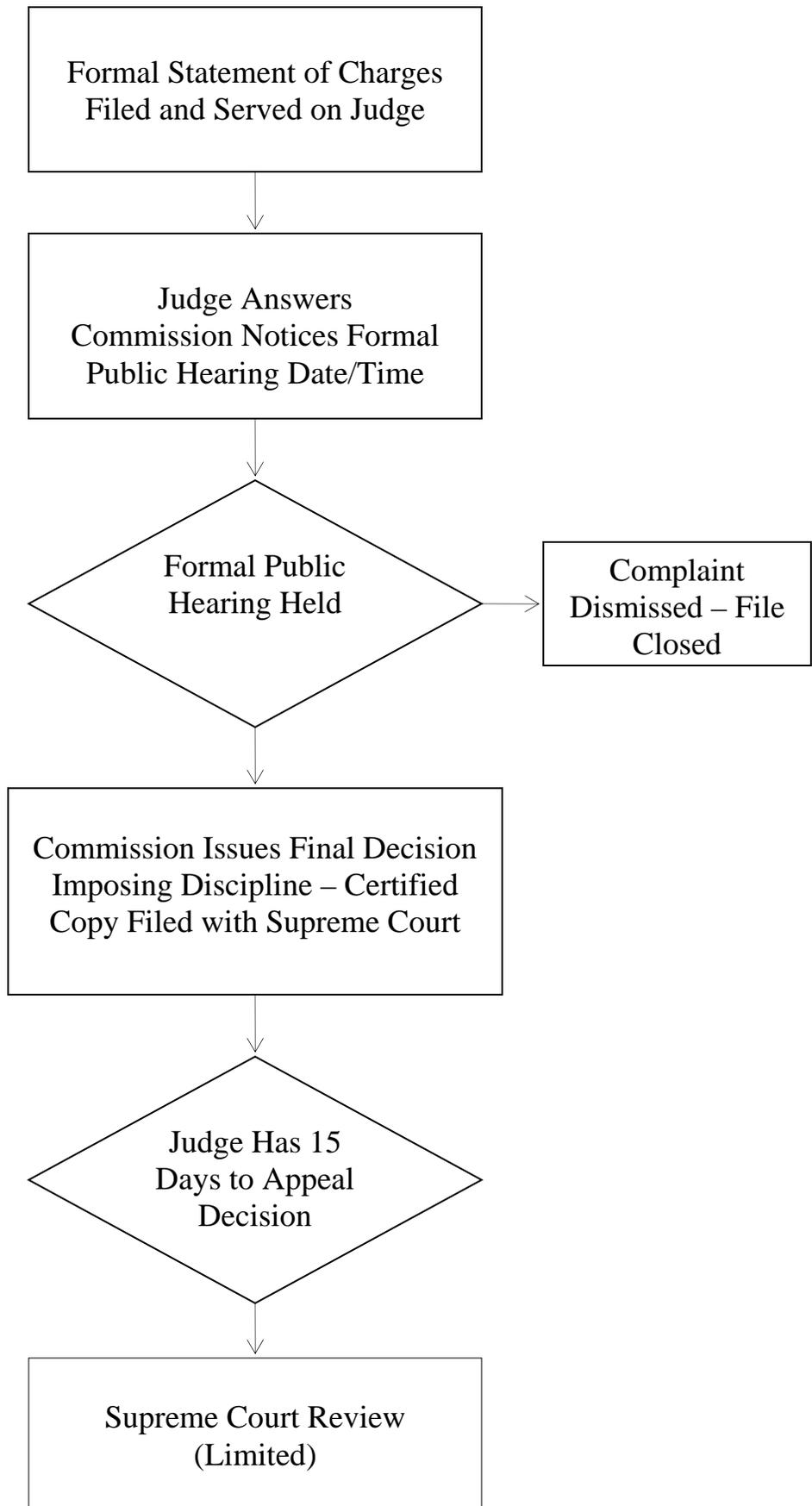
COMPLAINT  
PROCESS:

CONFIDENTIAL  
PROCEEDINGS



COMPLAINT  
PROCESS:

FORMAL  
PUBLIC  
PROCEEDINGS



APPENDIX B

**CASE DISPOSITIONS<sup>1</sup>**  
**FISCAL YEAR 2018**

<b>Disposition of Complaints</b>	<b>Number</b>
Dismissed after initial review	224
Dismissed after investigation - no action taken	3
Dismissed with cautionary letter*	19
Proceed to Formal Statement of Charges*	11
Total=	257

<b>Discipline Imposed/Disposition of Formal Statement of Charges</b>	<b>Number</b>
Fines	3
Judicial education	5
Informal discipline <sup>2</sup>	0
Public charges dismissed	0
Public reprimand	4
Public censure	3
Psychiatric evaluation	1
Written apologies	1
Suspension without pay	2
Removal/Barred from holding judicial office	0
Resignation	0

\*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

**CASE DISPOSITIONS<sup>1</sup>**  
**FISCAL YEAR 2019**

Disposition of Complaints	Number
Dismissed after initial review	182
Dismissed after investigation - no action taken	2
Dismissed with cautionary letter*	10
Proceed to Formal Statement of Charges or Stipulated Agreement Admitting Violations*	2
Total=	196

Discipline Imposed/Disposition of Formal Statement of Charges	Number
Fines	2
Judicial education	3
Informal discipline <sup>2</sup>	0
Public charges dismissed	0
Public reprimand	2
Public censure	2
Probation	1
Psychiatric evaluation	0
Written apologies	1
Interim suspension with pay	1
Removal/Barred from holding judicial office	1
Resignation	1

\*Includes consolidated matters

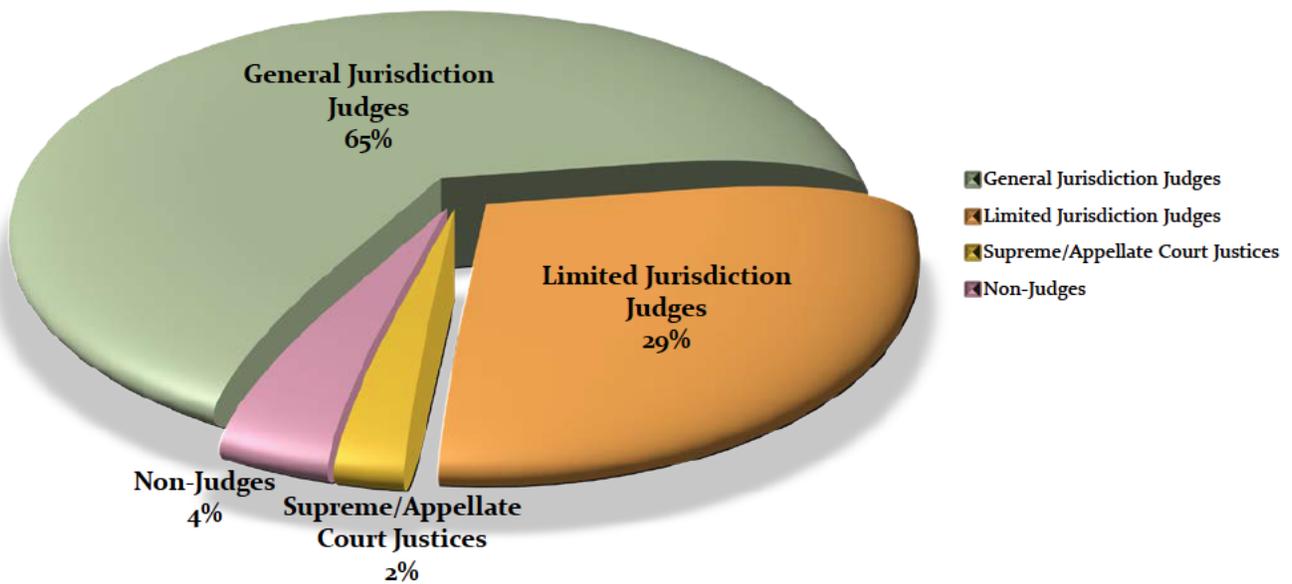
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<sup>1</sup>Case dispositions do not represent the number of complaints filed with the Commission in any given fiscal year. Rather, they indicate the actions taken by the Commission at the various stages of the judicial discipline process.

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

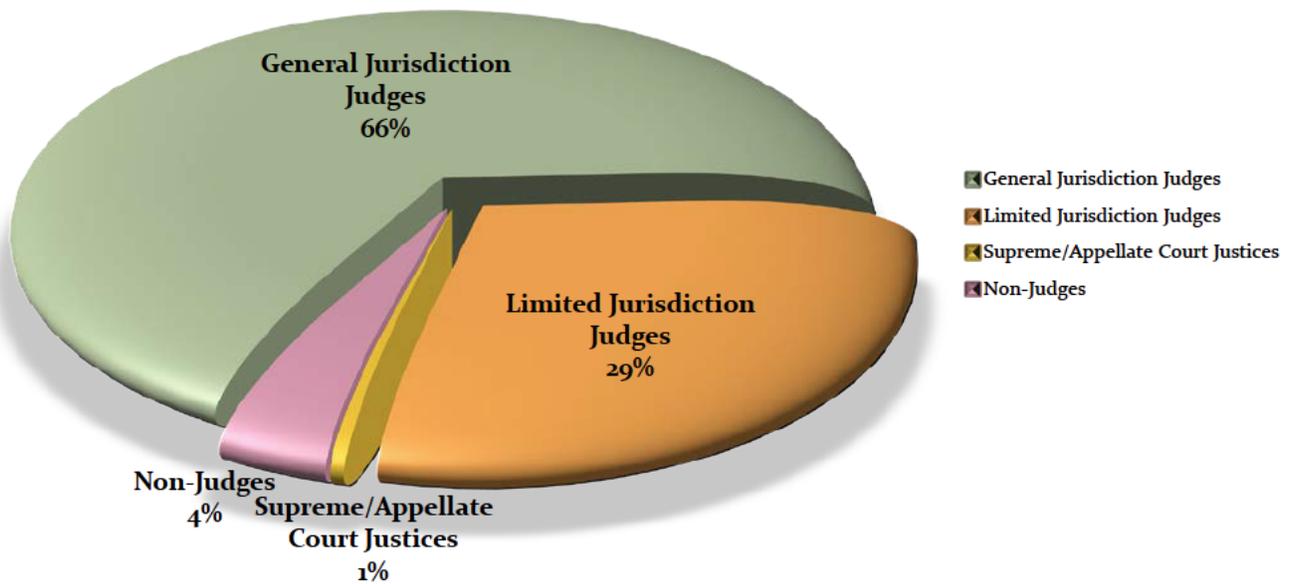
Category	Number of Complaints
General Jurisdiction Judges	156
Limited Jurisdiction Judges	70
Supreme/Appellate Court Justices	6
Non-Judges	10
<b>Total</b>	<b>242</b>

### Types of Judges Complained Against FY 2018



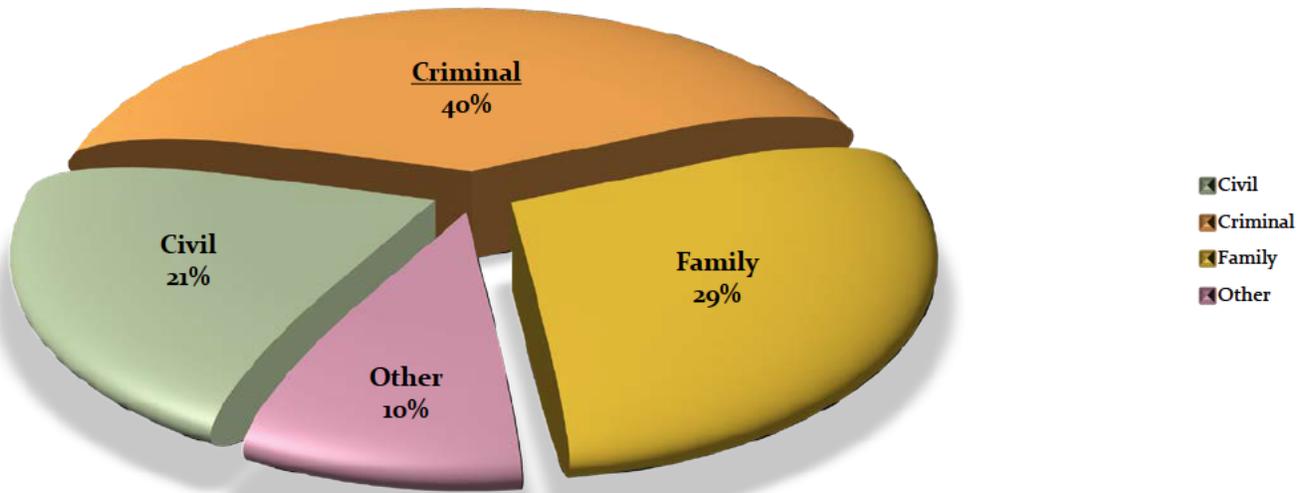
Category	Number of Complaints
General Jurisdiction Judges	130
Limited Jurisdiction Judges	58
Supreme/Appellate Court Justices	1
Non-Judges	8
<b>Total</b>	<b>197</b>

### Types of Judges Complained Against FY 2019



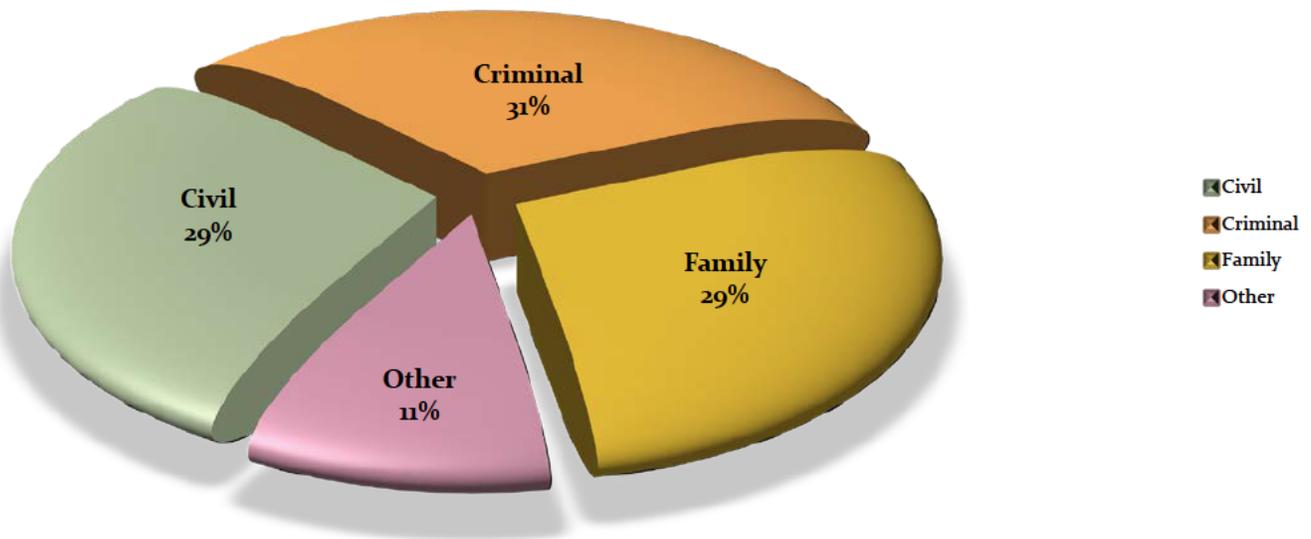
Category	Number of Complaints
Civil	50
Criminal	96
Family	71
Other	25
Total	242

### Area of Law- Complaint Origination FY 2018



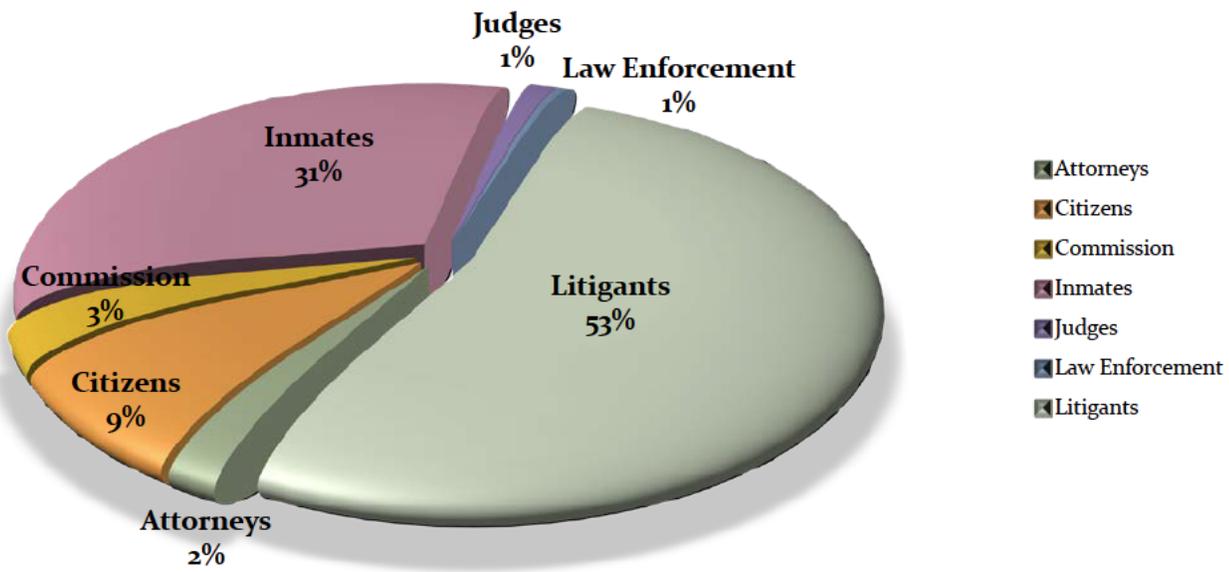
Category	Number of Complaints
Civil	57
Criminal	62
Family	56
Other	22
<b>Total</b>	<b>197</b>

### Area of Law- Complaint Origination FY 2019



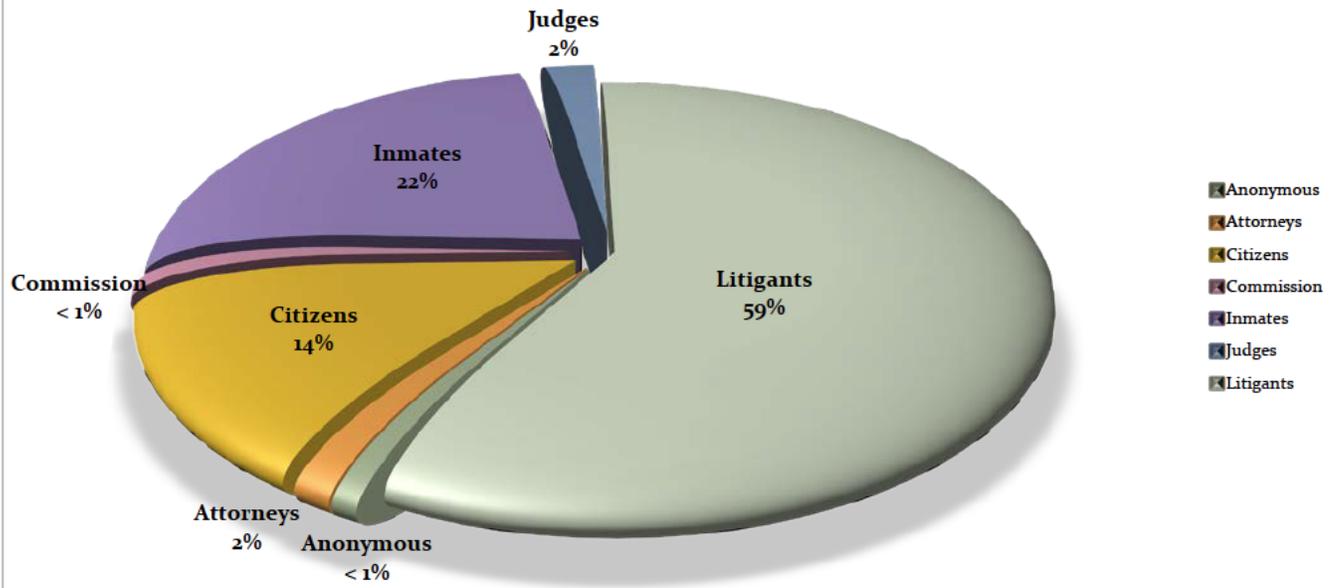
Category	Amount
Attorneys	5
Citizens	21
Commission	8
Inmates	75
Judges	3
Law Enforcement	1
Litigants	129
<b>Total</b>	<b>242</b>

### Sources of Complaints FY 2018



Category	Amount
Anonymous	2
Attorneys	3
Citizens	27
Commission	2
Inmates	43
Judges	4
Litigants	116
<b>Total</b>	<b>197</b>

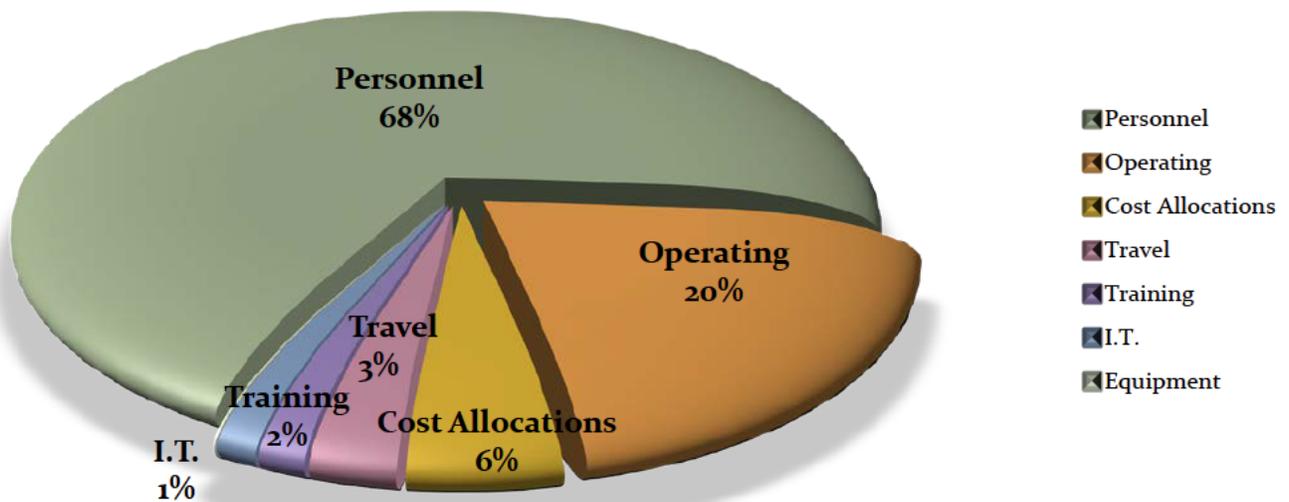
### Sources of Complaints FY 2019



APPENDIX C

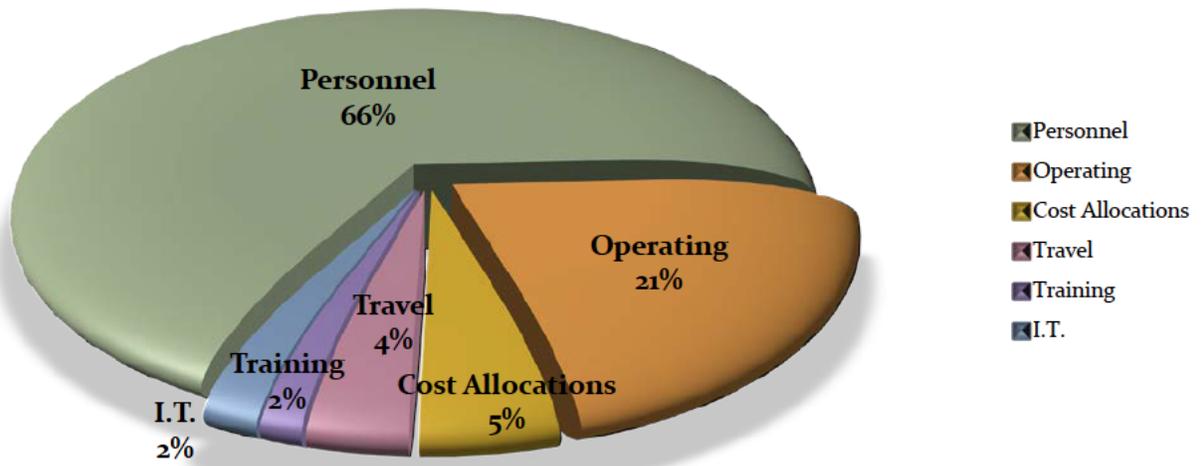
Category	Amount
Personnel	\$ 613,724
Operating	\$ 184,659
Cost Allocations	\$ 49,845
Travel	\$ 28,181
Training	\$ 15,308
I.T.	\$ 13,533
Equipment	\$ 850
<b>Total</b>	<b>\$ 906,100</b>

### Commission Budget Legislatively Approved FY 2018



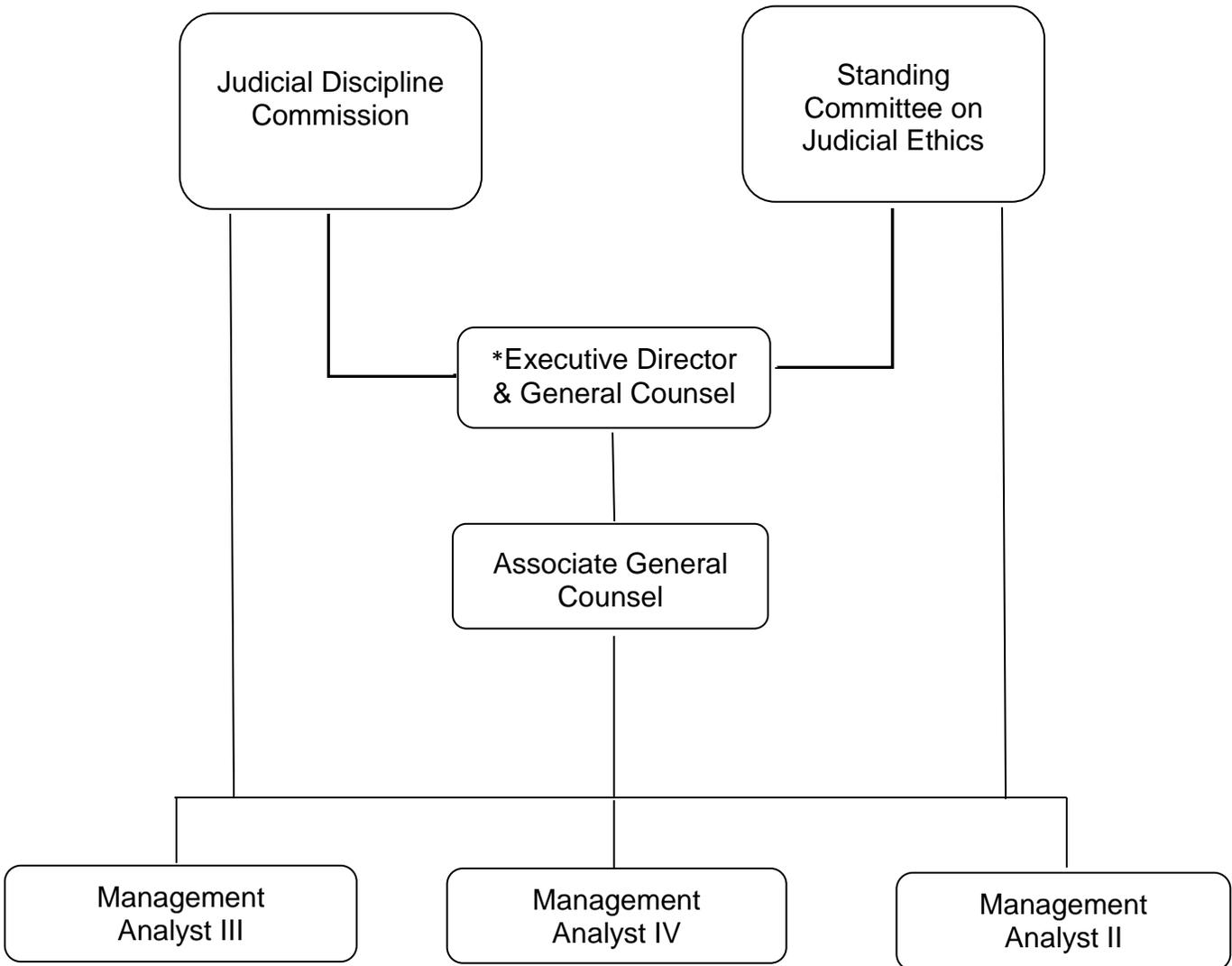
Category	Amount
Personnel	\$ 613,992
Operating	\$ 193,953
Cost Allocations	\$ 49,968
Travel	\$ 35,981
Training	\$ 15,308
I.T.	\$ 21,134
<b>Total</b>	<b>\$ 930,336</b>

### Commission Budget Legislatively Approved FY 2019



# ORGANIZATIONAL CHART

Budget Account 1497



\*This position serves as both the Executive Director and General Counsel to the Commission on Judicial Discipline, but only serves as Executive Director to the Standing Committee on Judicial Ethics. The Standing Committee does not have a General Counsel.