STATE OF KANSAS

COMMISSION ON JUDICIAL QUALIFICATIONS

2001 ANNUAL REPORT

FROM THE CHAIR

The Commission on Judicial Qualifications is charged with reviewing complaints that individuals file against judges, alleging ethical misconduct. The Commission does not deal with legal issues, and we find that our role many times is to explain this fact to complaining parties.

The Commission is now divided into two separate panels. One panel investigates a complaint and, if a determination is made that a formal hearing should be held on the complaint, it is referred to the other panel to conduct that public hearing. After operating for a full year, our experience is that the bifurcated procedure eliminates a problem of perception many on the Commission had observed, *i.e.*, the same panel investigating complaints and then conducting a hearing if required. The division into two panels, with separation of functions, has resulted in a better procedure.

You can see from the attached report that both panels of the Commission have been busy this past year. In addition, the Commission has made various recommendations to the Kansas Supreme Court and to the Office of Judicial Administration throughout the year with regard to possible conflicts of interest and personnel policies of the judicial branch.

Our hope is that the outstanding judicial system in the State of Kansas will continue to meet the high ethical standards required and will continue to work to improve the public's perception of the courts. We are open to suggestions any judge might have for ways to further improve the activities of the Commission.

Theodore B. Ice, Chair
Commission on Judicial Qualifications

April 2002

2001 ANNUAL REPORT

OF THE

KANSAS COMMISSION ON JUDICIAL QUALIFICATIONS

COMMISSION MEMBERS:	Term Expires
Judge Theodore B. Ice - Chair	2002
Robert A. Creighton - Vice-Chair	2002
Senior Judge J. Patrick Brazil	2003
Bruce Buchanan	2005
Ray Call	2002
Judge Kathryn Carter	2005
Judge Robert J. Fleming	2002
Marcia Poell Holston	2003
Judge Jennifer Jones	2004
John W. Mize	2003
Judge Lawrence E. Sheppard	2004
Carol Sader	2004
Karen L. Shelor	2005
Mikel L. Stout	2004

Supreme Court Liaison

Justice Fred N. Six

Commission Staff

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

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TABLE OF CONTENTS

COMMISSION MEMBERS

Panel A

(Seated l. to r.) Judge Jennifer Jones, Judge Theodore B. Ice, Marcia Poell Holston
(Standing l. to r.) Senior Judge J. Patrick Brazil, John W. Mize, Ray Call
(Karen Shelor not pictured)

COMMISSION MEMBERS

Panel B

(Seated l. to r.) Carol Sader, Robert A. Creighton, Bruce Buchanan
(Standing l. to r.) Judge Robert J. Fleming, Mikel L. Stout, Judge Lawrence E. Sheppard
(Judge Kathryn Carter not pictured)

BIOGRAPHIES
MEMBERS WHO SERVED DURING 2001

The Honorable J. Patrick Brazil received a BS/BA degree from Rockhurst College, Kansas City, Missouri, in 1957. He received his law degree from Washburn University School of Law in 1962. Judge Brazil was a state district judge from 1972 until the appellate court appointment on December 11, 1985. He was appointed Chief Judge June 1, 1995, and served as Chief Judge until his retirement in January 2001. He continues to sit with the appellate courts as a Senior Judge. Brazil has been a member of the Kansas Judicial Council since 1993 and the Kansas Commission on Judicial Qualifications since 1985, including service as chairman from 1991 to 1994. He has served in the officer positions of the Kansas District Judges' Association, including president from 1980-1981. He was a member of the Advisory Committee of the Kansas Judicial Council for Civil and Criminal Pattern Instructions for Kansas and is currently a member of the KBA Bench/Bar Committee. He is a member of the Conference of Chief Judges in the American Bar Association. He served on the Kansas Continuing Legal Education Commission from its creation in 1985 to July 1, 1991. In 1994, he received one of six Outstanding Service Awards conferred by the Kansas Bar Association. He is a member of the Topeka South Rotary Club.

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

Ray Call, a lay member of the Commission, retired December 31, 1995, as Executive Editor and editorial writer for *The Emporia Gazette*, where he was employed for more than forty years. He attended Coffeyville Junior College and Emporia State University and taught elementary school for three years before embarking on a career in journalism. Call is an Episcopalian and has served as Vestryman and Senior Warden. He and his wife moved from Emporia to Wichita in 1998. Call became a member of the Commission in October 1993.

The Honorable Kathryn Carter, a district magistrate judge from Concordia, Kansas, received her B.A. from the University of Kansas in 1973 and her Juris Doctorate in 1986. She was a solo law practitioner in the Jamestown-Concordia area in 1986-87 before she became a district magistrate judge in 1987. Judge Carter is noted for her work assisting children and was a founding member of Cloud County Planning Council, a multi-agency coalition formed to address needs of at-risk children. Judge Carter was appointed to the District Magistrate Judges' Certification and Education Committee by the Kansas Supreme Court in 1994. She was recipient of the Kansas CASA Association's Award of Excellence in 1999. In that year, she also served on the Judicial Council Child in Need of Care Advisory Committee. Judge Carter became a member of the Commission in January 1993.

Robert A. Creighton, lawyer member of the Commission, practices in Atwood, Kansas, with the firm of Brown, Creighton & Peckham. He is also a current member of the Atwood City Council and President of High Plains Banking Group, Inc., owner of banks at Flagler, Bennett and Wiggins, Colorado. Creighton received his B.A. from the University of Kansas in 1956 and his law degree in 1960. He served as Rawlins County Attorney from 1961-1967 and as Atwood City Mayor from 1984-1991. Board appointments include the Kansas Board of Regents (Chairman 1990-1991), Kansas Hospital Closure Commission (Chairman), League of Kansas Municipalities Governing Body, Atwood Second Century Development Fund, Rawlins County Hospital Board (past Chairman), Atwood City Library Board (past Chairman), and the Atwood Jayhawk Theater Board. Civic activities include Greater Northwest Kansas, Inc. (founder and past President);

Mid American Masters Association (founder and past President), Atwood Rotary (past President), Atwood Chamber of Commerce (past President), and KU Alumni Association Advisory Board. He is a current member of the Advisory Board of the Kansas University Hall Center for the Humanities. He was appointed to the Commission on Judicial Qualifications in July 1994.

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

Marcia Poell Holston, a lay member of the Commission, joined Harrison Coerver & Associates as an association management consultant in 1998. Prior to that, she was Executive Director of the Kansas Bar Association for 15 years and served concurrently as President of the state bar's for-profit subsidiary, Kansas Lawyer Service Corporation, and Executive Director of its Foundation. During her tenure with the Bar, she was an active member of the National Association of Bar Executives (Executive Council Member and Communications Section President) and the Kansas Society of Association Executives (President 1993). In addition to her professional associations, Holston has served on the Boards of Directors of the Kansas Chamber of Commerce and Industry, the Topeka Convention & Visitors Bureau, and the Topeka YWCA. She was selected for participation in the Kansas Chamber of Commerce and Industry' s Leadership Kansas program in 1986. Holston's career also includes five years as the Public Relations Director of the state bar association, two years as Communications Director for Central Research Corporation, two years as an aide to Congresswoman Martha Keys, and three years as teacher with the Topeka Public Schools. Holston earned a B.A. in Education and English Literature from Washburn University in 1971 and did graduate work in communications at the University of Kansas. She also holds the Certified Association Executive designation of the American Society of Association Executives. Holston has been a member of the Commission since May 1999.

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

The Honorable Jennifer Jones is a municipal court judge for the City of Wichita. Prior to being appointed to this position, she served as a district judge in the Juvenile Division of the 18th Judicial District for eight years. When elected to that position, she became the first African American female district court judge in the history of the State of Kansas. She obtained a Bachelor's Degree in Social Work from the University of Missouri-Columbia in 1982. She received her Juris Doctorate Degree from the University of Oklahoma in May 1985. Jones began her career as an Assistant District Attorney in Muskogee, Oklahoma. Upon her return to Wichita in May 1988, she became associated with the law firm of Bruce & Davis and became a partner in January 1992. She maintained an active general practice in the areas of commercial, juvenile, family, bankruptcy, and

probate law. Jones has served as an assigned panel member of the Kansas Court of Appeals. She is an active member of the community serving on the Board of Directors for the YWCA, Big Brothers/Big Sisters of Sedgwick County, YMCA Community Development Board, and the Wichita Chapter of Links, Inc. She has been a member of the Commission since May 1999.

John W. Mize, a lawyer member of the Commission, is Vice-President and general counsel of Salina Regional Health Center and is Of Counsel with the law firm of Clark, Mize & Linville, Chartered in Salina. He received his B.A. from the University of Kansas in 1972 and his J.D. from Southern Methodist University in 1975. His professional activities include service on the 28th Judicial District Nominating Commission (1988-1996), as President of the Saline-Ottawa County Bar Association, and as a director of the Kansas Association of Hospital Attorneys, and membership in the American Health Lawyers Association, the American Bar Association, and the Kansas Bar Association. He has served as Chairperson of the Salina Area Chamber of Commerce, the Salina Area United Way Campaign, and the Asbury-Salina Regional Health Center. He is currently a trustee of the Kansas University Endowment Association, the Kansas University Alumni Association, the Salina Regional Health Foundation, and the Salina YMCA Endowment Association. Mize was appointed to the Commission in June 1999.

Carol Sader, a lay member of the Commission from Prairie Village, received her B.A. from Barnard College in 1957. She also attended Chicago-Kent College of Law and the University of Cincinnati College of Law. Ms. Sader taught school and served as a legal editor before running for elective office. She served as a Kansas State Representative for the 22nd Legislative District from 1987-1994 and ran for Lieutenant Governor of Kansas in 1994. During her legislative tenure, she served as chair and vice-chair of several committees. She currently serves on the Kansas Insurance Commissioner's Advisory Committee on Health Care. Ms. Sader's current community service includes: The Mainstream Coalition (Vice-Chairman), Johnson County Charter Commission, Johnson County Foundation on Aging (Vice President), Kansas Appleseed Foundation Board, Coalition for Positive Family Relationships Advisory Board, Johnson County Arts and Humanities Council Advisory Board, League of Women Voters, Health Partnership of Johnson County Advisory Council, and the Johnson County Community College Foundation Executive Board. Ms. Sader's prior public and community service include serving as an elected trustee and Chair of the Board of Trustees of Johnson County Community College and President of the Johnson County League of Women Voters. Among her many awards are a distinguished public service award from the United Community Services of Johnson County (1993), HALLPAC Kansas Public Service Award (1993), Who's Who in American Women (1991-2000), and Who's Who In America (1994-2000). Ms. Sader was appointed a member of the Commission in June 1995.

Karen Shelor, a lawyer member of the Commission, practices in Shawnee Mission, Kansas, with the firm of Sexton, Shelor, Latimer and Pryor. She received her B.G.S. in 1976 from the University of Kansas and her law degree from Washburn University in 1980. She is also the recipient of the National Council for Children's Rights Justice Burger Award, 1987; Parents Without Partners Legislative Service Award, 1992; Kansas Bar Association Outstanding Service Award, 1992; National Center for Missing and Exploited Children Award of Merit, 1996. She was a member of the Mayor's Commission on the Status of Women from 1976-1977 and Editor of the Family Law Section, *Kansas Trial Lawyers Journal*, 1996. Shelor received mediation certification from the Association of Family and Conciliation Courts in 1988. She served as president of the Wyandotte County Bar Association in 1986 and as treasurer in 1983. She has served on the following Wyandotte County Bar entities: Bench/Bar Committee from 1988-1998 (Chair 1988); Foundation Board of Directors, 1994-1999; Chair, Family Law Committee, 1993-1997; and the Local Rules Committee from 1998 to present. Shelor was named in *The Best Lawyers in America* from 1993-2002. She has been a member of the Kansas Board for Discipline of Attorneys since 1995 and has been a member of this Commission since November 1999.

The Honorable Lawrence E. Sheppard, district judge in the Tenth Judicial District, Olathe, Kansas, is a graduate of the University of Kansas with degrees in economics (B.A. 1963) and law (J.D. 1966). Upon graduation from law school he entered the private practice of law with the firm of Pflumm, Mitchelson and Amrein in Mission, Kansas (1966-67). He served as Executive Assistant to U.S. Rep. (ret.) Larry Winn, Jr. (1968). He was an assistant city attorney for the City of Overland Park (1969-1971). He resumed private law

practice (1972-1987) until his appointment as a district judge in July 1987. Sheppard is a member of the American Bar Association, Kansas Bar Association and Johnson County Bar Association (President 1981). He is also a Master in the Earl E. O'Connor American Inn of Court. He was a member of the Kansas Board for Discipline of Attorneys (1986-1987) and was appointed to the Commission on Judicial Qualifications in July 2000.

Mikel L. Stout, lawyer member of the Commission, is in private practice with Foulston & Siefkin L.L.P. in Wichita. He received his B.S. from Kansas State University in 1958 and his LL.B., with distinction, from the University of Kansas in 1961. Stout was a member of the Order of the Coif and associate editor of the *University of Kansas Law Review.* His professional activities include the American College of Trial Lawyers (Regent 2000-2004); Kansas Association of Defense Counsel (president 1983-84); Wichita Bar Association (president 1987-88); Kansas Bar Foundation (president 1991-93); Civil Justice Reform Act Advisory Committee for the United States District Court for the District of Kansas (co-chair 1991-1995); and member of the American Bar Association. In community activities, Stout was president of Wichita Festival, Inc. 1978-79, and captain of the Wichita Wagonmasters 1982-83 and Admiral Windwagon Smith XXVIII 2001-02. He has been a member of the Commission since January 1984.

SECRETARY TO THE COMMISSION

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

A BRIEF HISTORY OF THE COMMISSION

The Kansas Commission on Judicial Qualifications was established by the Supreme Court of the State of Kansas on January 1, 1974. The Commission, created under the authority granted by Article III, Section 15 of the Kansas Constitution and in the exercise of the inherent powers of the Supreme Court, is charged with assisting the Supreme Court in the exercise of the Court's responsibility in judicial disciplinary matters.

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

Those who have chaired the Commission include:

Judge L.A. McNalley	1974-1977
Fred N. Six	1977-1981
Kenneth C. Bronson	1981-1983
Charles S. Arthur	1983-1985
Judge Lewis C. Smith	1985-1986
Judge O. Q. Claflin	1986-1988
Judge Steven P. Flood	1988-1991
Judge J. Patrick Brazil	1991-1994
Mikel L. Stout	1994-1997
David J. Waxse	1997-1999
Judge Kathryn Carter	1999-2001
Judge Theodore B. Ice	2001-

Past members of the Commission who served with distinction include:

James J. Noone	Wichita	served while active judges
James W. Paddock	Lawrence	and subsequently as retired judges
L.A. McNalley	Salina	served as
O. Q. Claflin, III	Kansas City	retired judges
Bert Vance	Garden City	served while
Harold R. Riggs	Olathe	active judges
Brooks Hinke	Paola	
M. V. Hoobler	Salina	
Lewis C. Smith	Olathe	
Steven P. Flood	Hays	
Robert H. Nelson	Wichita	served as
Edward F. Arn	Wichita	lawyer members
John J. Gardner	Olathe	
Fred N. Six	Lawrence	
Charles S. Arthur	Manhattan	
David J. Waxse	Overland Park	
Georgia Neese Gray	Topeka	served as
Kenneth C. Bronson	Topeka	non-lawyer
Dr. Nancy Bramley Hiebert	Lawrence	members

HOW THE COMMISSION OPERATES

Jurisdiction/Governing Rules

The Commission's jurisdiction extends to approximately 500 judicial positions including justices of the Supreme Court, judges of the Court of Appeals, judges of the district courts, district magistrate judges, and municipal judges. This number does not include judges pro tempore and others who, from time to time, may be subject to the Code of Judicial Conduct.

The Supreme Court Rules governing operation of the Commission are found in the Kansas Court Rules Annotated. See 2001 Kan. Ct. R. Annot. 485-536.

Staff

The Clerk of the Supreme Court serves as secretary to the Commission pursuant to Supreme Court Rule 603. The secretary acts as custodian of the official files and records of the Commission and directs the daily operation of the office. A deputy clerk, Carol Deghand, manages the operation of the office.

The Commission also retains an examiner, a member of the Kansas Bar who investigates complaints, presents evidence to the Commission, and participates in proceedings before the Supreme Court.

Initiating a Complaint

The Commission is charged with conducting an investigation when it receives a complaint indicating that a judge has failed to comply with the Code of Judicial Conduct or has a disability that seriously interferes with the performance of judicial duties.

Any person may file a complaint with the Commission. Initial inquiries may be made by telephone, by letter, or by visiting the Appellate Clerk's Office personally.

All who inquire are given a copy of the Supreme Court Rules Relating to Judicial Conduct, a brochure about the Commission, and a complaint form. The complainant is asked to set out the facts and to state specifically how the complainant believes the judge has violated the Code of Judicial Conduct. Very often, the opportunity to voice the grievance is sufficient, and the Commission never receives a formal complaint. In any given year, one-fourth to one-third of the initial inquiries will result in a complaint being filed.

The remainder of the complaints filed come from individuals already familiar with the Commission's work or who have learned about the Commission from another source.

Use of the standard complaint form is encouraged but not mandatory. If the complaint received is of a general nature, the Commission's secretary will request further specifics.

In addition to citizen complaints, the Commission may investigate matters of judicial misconduct on its own motion. Referrals are also made to the Commission through the Office of Judicial Administration and the Office of the Disciplinary Administrator.

Referrals are made through the Office of Judicial Administration on personnel matters involving sexual harassment. The Kansas Court Personnel Rules provide that, if upon investigation the Judicial Administrator finds probable cause to believe an incident of sexual harassment has occurred involving a judge, the Judicial Administrator will refer the matter to the Commission on Judicial Qualifications. *See* Kansas Court Personnel Rule 10.4(e).

The Disciplinary Administrator refers complaints to the Commission if investigation into attorney misconduct implicates a judge. There is a reciprocal sharing of information between the two offices.

Commission Review and Investigation

When written complaints are received, all are mailed to a panel of the Commission for review at its next meeting. In the interim, if it appears that a response from the judge would be helpful to the Commission, the secretary may request the judge to submit a voluntary response. With that additional information, the panel may be able to consider a complaint and reach a decision at the same meeting.

All complaints are placed on the agenda, and the panel determines whether they will be docketed or remain undocketed. A docketed complaint is given a number and a case file is established.

Undocketed complaints are those which facially do not state a violation of the Code; no further investigation is required.

Appealable matters constitute the majority of the undocketed complaints and arise from a public misconception of the Commission's function. The Commission does not function as an appellate court. Examples of appealable matters which are outside the Commission's jurisdiction include: matters involving the exercise of judicial discretion, particularly in domestic cases; disagreements with the judge's application of the law; and evidentiary or procedural matters, particularly in criminal cases.

Many complaints address the judge's demeanor, attitude, degree of attention, or alleged bias or prejudice. These are matters in which the secretary is likely to request a voluntary response from the judge and, based on that response, the Commission in some

instances determines there has clearly been no violation of the Code.

These undocketed complaints are dismissed with an appropriate letter to the complainant and to the judge, if the judge has been asked to respond to the complaint.

Docketed complaints are those in which a panel feels that further investigation is warranted.

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

Disposition of Docketed Complaints

After investigation of docketed complaints, the panel may choose a course of action short of filing formal proceedings.

A complaint may be dismissed after investigation. On docketing, there appeared to be some merit to the complaint, but after further investigation the complaint is found to be without merit.

A complaint may be dismissed after investigation with caution. The panel finds no violation in the instant complaint, but the judge is cautioned to avoid such situations in the future. Cautionary letters have been issued when alcohol consumption appears problematic or when there is a strong suggestion of inappropriate personal comment.

Letters of informal advice are issued when some infraction of the Code has occurred, but the infraction does not involve a continuing course of conduct. Such letters may, for example, address isolated instances of delay, ex parte communication, or discourtesy to litigants or counsel.

A cease and desist order may be issued when the panel finds factually undisputed violations of the Code which represent a continuing course of conduct. The judge must agree to comply by accepting the order, or formal proceedings will be instituted. Examples of conduct resulting in cease and desist orders include: activity on behalf of a political candidate or intervention with a fellow judge on behalf of family or friends.

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

Confidentiality

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

Other narrowly delineated exceptions to the rule of confidentiality exist. Rule 607(c) provides a specific exception to the rule of confidentiality with regard to any information which the Commission or a panel considers relevant to current or future criminal prosecutions or ouster proceedings against a judge. Rule 607 further permits a waiver of confidentiality, in the Commission' s or panel' s discretion, to the Disciplinary Administrator, the Impaired Judges Assistance Committee, the Supreme Court Nominating Commission, the District Judicial Nominating Commissions, and the Governor with regard to nominees for judicial appointments. The Commission or a panel may also, in its discretion, make public all or any part of its files involving a candidate for election or retention in judicial office.

Formal Proceedings

During the investigation stage prior to the filing of the notice of formal proceedings, the judge is advised by letter that an investigation is underway. The judge then has the opportunity to present information to the examiner. Rule 609.

If a panel institutes formal proceedings, specific charges stated in ordinary and concise language are submitted to the judge. The judge has an opportunity to answer and a hearing date is set. Rule 611(b); Rule 613. The hearing on that notice of formal proceedings is conducted by the other panel, which has no knowledge of the investigation or prior deliberations.

The hearing on a notice of formal proceedings is a public hearing. The judge is entitled to be represented by counsel at all stages of the proceedings, including the investigative phase prior to the filing of the notice of formal proceedings if the judge so chooses. The rules of evidence applicable to civil cases apply at formal hearings. Procedural rulings are made by the chair, consented to by other members unless one or more calls for a vote. Any difference of opinion with the chair is controlled by a majority vote of those panel members present.

The Commission Examiner presents the case in support of the charges in the notice of formal proceedings. At least five members of the panel must be present when evidence is introduced. A vote of five members of the panel is required before a finding may be entered that any charges have been proven.

If the panel finds the charges proven, it can admonish the judge, issue an order of cease and desist, or recommend to the Supreme Court the discipline or compulsory retirement of the judge. Discipline means public censure, suspension, or removal from office. Rule 620.

The panel is required in all proceedings resulting in a recommendation to the Supreme Court for discipline or compulsory retirement to make written findings of fact, conclusions of law, and recommendations which shall be filed and docketed by the Clerk of the Supreme Court as a case. Rule 622. The respondent judge then has the opportunity to file written exceptions to the panel's report. A judge who does not wish to file exceptions may reserve the right to address the Supreme Court with respect to disposition of the case. Rule 623.

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

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

COMMISSION ACTIVITY IN 2001

At the close of 2001, there were 506 judicial positions subject to the Commission's jurisdiction.

Justices of the Supreme Court	7
Judges of the Court of Appeals	10
Judges of the District Courts	160
District Magistrate Judges	74
Municipal Judges	255

Others are subject to the Code of Judicial Conduct on an ad hoc basis. The compliance statement appended to the Code provides: "Anyone, whether or not a lawyer, who is an officer of the judicial system, is a judge within the meaning of this Code. Judge is defined as: 'Any judicial officer who performs the functions of a judge in the courts of this state including Kansas Supreme Court Justices, Court of Appeals Judges, District Judges, District Magistrate Judges, and Municipal Court Judges. Where applicable, the term "judge" also contemplates Masters, Referees, Temporary Judges, *Pro Tempore* Judges, Part-time Judges, and Commissioners if they perform any functions of a judge in any court of this state.' " 2001 Kan. Ct. R. Annot. 511-512. No attempt has been made in this report to enumerate those individuals.

In 2001, the Commission received 393 inquiries by telephone, by letter, or by personal visit to the Clerk's Office. Of those individuals, 225 were mailed copies of the Supreme Court Rules Relating to Judicial Conduct, a complaint form, and a brochure describing the work of the Commission. Of those 225, 65 responded by filing a complaint. An additional 94 complaints were received for a total of 159 complaints received in 2001. Of those complaints, 31 were eventually docketed. For a discussion of the distinction between undocketed and docketed complaints, see this report at pages 18 and 19.

The Commission disposed of 126 undocketed complaints and twenty-seven docketed complaints in 2001.

COMMISSION ON JUDICIAL QUALIFICATIONS
January 1, 2001 - December 31, 2001

TOTAL NUMBER OF INQUIRIES	393
RULES AND COMPLAINT FORMS MAILED	225
NUMBER OF COMPLAINTS RECEIVED	159
NUMBER OF COMPLAINTS DOCKETED	31
DOCKETED COMPLAINTS PENDING ON JANUARY 1, 2001	5

DISPOSITION OF DOCKETED COMPLAINTS

Dismissed after investigation	20
Dismissed after investigation with caution	4
Letter of informal advice issued	1
Private Cease and Desist Order issued	1
Formal Hearing Held, Recommendation of Public Censure made to Supreme Court	1
Pending on December 31, 2001	9
	36

POSITION OF JUDGE AGAINST WHOM A DOCKETED COMPLAINT WAS FILED

District Judge	20
District Judge Retired	1
District Magistrate	2 (non-law-trained
Judge Pro Tempore	1 (law-trained)
Court Trustee	1 (law-trained)
Hearing Officer	1 (law-trained)
	26[1]

[1]In some instances, more than one complaint was filed against the same judge.

Substance of Complaints

2001

Abuse of Power	7
Administrative Inefficiency	15
Conduct Inappropriate to Judicial Office	6
Conflict of Interest	14
Delay in Making Decision	5
Denied Hearing/Denied Fair Hearing	40
Disagreement With Ruling	13
Ex Parte Communication	6
Failure to Enforce Order	1
Failure to State a Complaint, Appealable Matter, or Legal Issue	41
Improper Election Campaign Conduct /Political Activity Inappropriate to Judicial Office	0
Improper Influence	6
Inappropriate Personal Comment	7
Injudicious Temperament	12
Prejudice/Bias	19
Failure to Control Courtroom	0
Intemperance	0

Individual complaints may contain more than one allegation of misconduct.

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

No ethical violation was found when a judge failed to recuse in a criminal matter in which one of the witnesses was related to the judge's wife. They were second cousins and beyond the third degree of relationship as set forth in the Rules Relating to the Conduct of Judges.

No ethical violation was found when a judge unintentionally destroyed an original Notice of Appeal, thinking it was a copy. The judge was apparently unaware that the party intended the document to be filed with the court.

A litigant complained that court-appointed counsel was ineffective and that the judge had an obligation to intervene before, during and after the trial. These are legal issues which should be appealed to a higher court if errors are thought to have occurred.

No ethical violation was found when a court trustee issued a subpoena duces tecum for the defendant's failure to pay child support. State statutes provide that a court trustee shall be authorized and empowered to pursue all civil remedies which would be available to the obligee in establishing and enforcing payment of support. Subpoenas duces tecum are listed among the additional powers and duties of a court trustee if approved by the administrative judge.

No ethical violation was found when the judge said he did not want to listen to any more testimony in a custody case. The judge had heard enough to make a decision.

No ethical violation was found when a judge in court referred to the defendant by his brother's name.

No ethical violation was found when a judge dismissed a defendant's private counsel for what the judge believed to be a conflict of interest. The plaintiff could challenge dismissal of his counsel through appeal.

EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

A judge was informally advised that a humorous statement he made to a defendant's attorney about the defendant's conduct was inappropriate. The judge was reminded to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

A judge was cautioned regarding actual or potential mishandling of paperwork in cases of pro se litigants. The judge was encouraged to do as much as an individual judge can do to affect the overall efficiency of judicial operations.

A judge accepted a private order of cease and desist for threatening to sentence the respondent to jail if he did not remain in the military to full retirement age, allowing his ex-wife to collect half of the retirement. The judge provided a contemporaneous tour of the jail and said he would find the respondent in contempt of court, thereby tacitly sentencing a litigant without a hearing.

A judge was cautioned to avoid the appearance of independent investigation in obtaining a copy of an evidentiary document when the judge questioned the attorney's ethics. The Commission understands the judge's effort to make this determination; however, a better practice would be to have counsel provide copies of relevant documents.

A judge was cautioned regarding judicial demeanor for acting grumpy and impatient.

A judge was cautioned about the judge's affirmative duty to disclose on the record at the outset of proceedings when the judge's impartiality might reasonably be questioned. The judge owned recreational property with a group that included attorneys.

A judge received a cautionary letter regarding ex parte communication with litigants in a domestic matter.

A judge was cautioned to, in the future, visit with the chief judge about scheduling difficulties to avoid delay when absent from work because of illness.

A judge was cautioned about referring to a litigant in a derogatory manner in comment to his administrative assistant.

Suggestion was made that, in the future, judges review the Canons and *In re Fogan*, 646 So.2d 191 (Fla. 1994), before voluntarily submitting evidence in an adjudicatory proceeding.

A judge informed a litigant by letter that an opinion would be filed by a certain date; however, it was not. The Commission reminded the judge of Supreme Court Rule 166, which requires a judge to report to the Office of Judicial Administration any civil matter not decided within ninety days after final submission. These standards are set by the Supreme Court and are not enforced by the Commission; however, failure to follow a Supreme Court standard could implicate ethical standards.

Another judge in a case of delay was reminded about Supreme Court Rule 166. When the case was submitted five months earlier, the judge said a decision could be expected in 7 - 10 days.

A complaint was received regarding bias and prejudice, alleging the judge showed favoritism toward the plaintiff through eye contact, personal conversation, smiles, side comments, and jokes. Questions of demeanor and off-the-record comments are difficult to evaluate. The complaint was provided to the judge to show how one's demeanor can impact the perception of bias or prejudice.

APPENDICES

Appendix A

REPORTED JUDICIAL DISCIPLINARY CASES UNDER RULE 601

In re Rome, 218 Kan. 198, 542 P.2d 676 (1975).

In a criminal proceeding, a magistrate judge issued a memorandum decision which held the defendant out to public ridicule or scorn. The decision was, incidentally, issued in poetic form.

The Supreme Court found the conduct violated Canon 3 A. (3) which requires a judge to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity." The court ordered public censure.

In re Baker, 218 Kan. 209, 542 P.2d 701 (1975).

The Commission on Judicial Qualifications found six violations of Canon 7 arising out of advertising materials used in a campaign for judicial office.

The Supreme Court found no violation as to five charges, holding the activities to come within the pledge of faithful performance of the duties of judicial office. The court found the health, work habits, experience, and ability of the candidates to be matters of legitimate concern to the electorate. As to the sixth charge, the court found that a campaign statement by a candidate for judicial office that an incumbent judge is entitled to a substantial pension if defeated, when the judge is not in fact eligible for any pension, violates the prohibition of Canon 7 B. (1) (c) against misrepresentation of facts. The court imposed the discipline of public censure.

In re Sortor, 220 Kan. 177, 551 P.2d 1255 (1976).

A magistrate judge was found by the Commission to have been rude and discourteous to lawyers and litigants and, on occasion, to have terminated proceedings without granting interested parties the right to be heard.

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

In re Dwyer, 223 Kan. 72, 572 P.2d 898 (1977).

A judge of the Court of Common Pleas of Sedgwick County was found to lack patience, courtesy, dignity, and the appearance of fairness and objectivity. A course of conduct was established which demonstrated an intemperate, undignified, and discourteous attitude toward and treatment of litigants and members of the public who came before the judge.

The Supreme Court found the judge had violated Canons 3 A. (2), (3), and (4). The court imposed public censure.

In re Miller, 223 Kan. 130, 572 P.2d 896 (1977).

A judge of the district court asked a judge of the county court to dismiss a ticket of an acquaintance of the judge. When the judge of the county court declined, the judge of the district court inquired whether the fine could be reduced. The judge of the county court again declined; whereupon, the judge of the district court remarked, "Well, I guess that is one favor I don't owe you."

The Supreme Court found violations of Canons 2 A. and 2 B. which exhort a judge to avoid impropriety and the appearance of impropriety. The court ordered public censure.

In re Hammond, 224 Kan. 745, 585 P.2d 1066 (1978).

A judge of the district court was found to have demanded sexual favors of female employees as a condition of employment.

The Supreme Court found violations of Canons 1, 2 A. and 3 B. (4). Noting that the judge's retirement due to disability made suspension from duty or removal from office unnecessary, the court ordered public censure.

In re Rome, 229 Kan. 195, 623 P.2d 1307 (1981).

An associate district judge was found to lack judicial temperament as evidenced by his actions in the following regard. The judge acted in a manner that did not promote public confidence in the integrity and impartiality of the judiciary and allowed his personal views or appeared to allow his personal views on the political issue of selection of judges to influence his judicial conduct or judgment. The judge, in writing a memorandum decision, purposefully attempted to be critical of actions of

the county attorney and of a fellow judge. The judge purposefully made allegations of fact and stated as conclusions factual matters that were at the time he made his statements being contested in separate criminal cases. Subsequent to making such statements, the judge purposefully and intentionally attempted to get them publicized by sending copies to the news media.

The Supreme Court found violations of Canons 1, 2, 3 A. (1), 3 A. (3), and 3 A. (6). The judge was ordered removed from office.

In re Woodworth, 237 Kan. 884, 703 P.2d 844 (1985).

A judge of the district court was convicted of violating a statute which makes it unlawful to have in one's possession any package of alcoholic liquor without having thereon the Kansas tax stamps required by law.

The Supreme Court found violations of Canons 1 and 2 A. relating to the integrity and independence of the judiciary and the avoidance of impropriety and the appearance of impropriety. The court ordered public censure.

In re Levans, 242 Kan. 148, 744 P.2d 800 (1987).

A district magistrate judge removed eight railroad ties belonging to a railway company without written permission or verification of purported oral authority. The judge did not fully cooperate during investigation of the incident.

The Supreme Court found violations of Canons 1 and 2. The court ordered public censure.

In re Yandell, 244 Kan. 709, 772 P.2d 807 (1989).

A judge of the district court violated the law by leaving the scene of a non-injury accident and in so doing also violated the terms of a previous cease and desist order issued by the Commission on Judicial Qualifications. Numerous other violations arose out of the judge's conduct in various financial transactions and his failure to recuse himself in contested cases involving his creditors.

The Supreme Court found violations of Canons 1, 2 A., 3 C., 5 C. (1), 5 C. (3), and 5 C. (4) (b). The court ordered removal from office.

In re Long, 244 Kan. 719, 772 P.2d 814 (1989).

A judge of the district court was found to have failed to respect and comply with the law, carry out her adjudicative responsibility of promptly disposing of the business of the court, and diligently discharge her administrative responsibilities and maintain professional competence in judicial administration.

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

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

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

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

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

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

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

REPORTED JUDICIAL DISCIPLINARY CASES UNDER RULE 601A

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

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

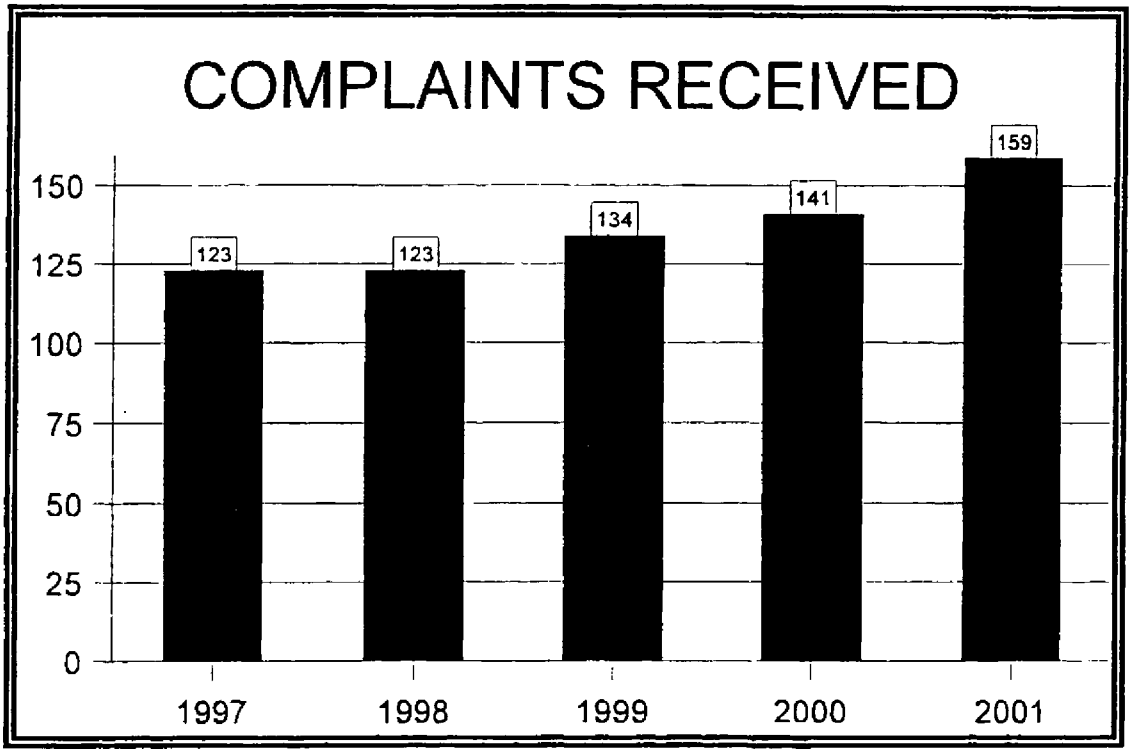
In re Platt, 269 Kan. 509, 8 P.3d 686 (2000).

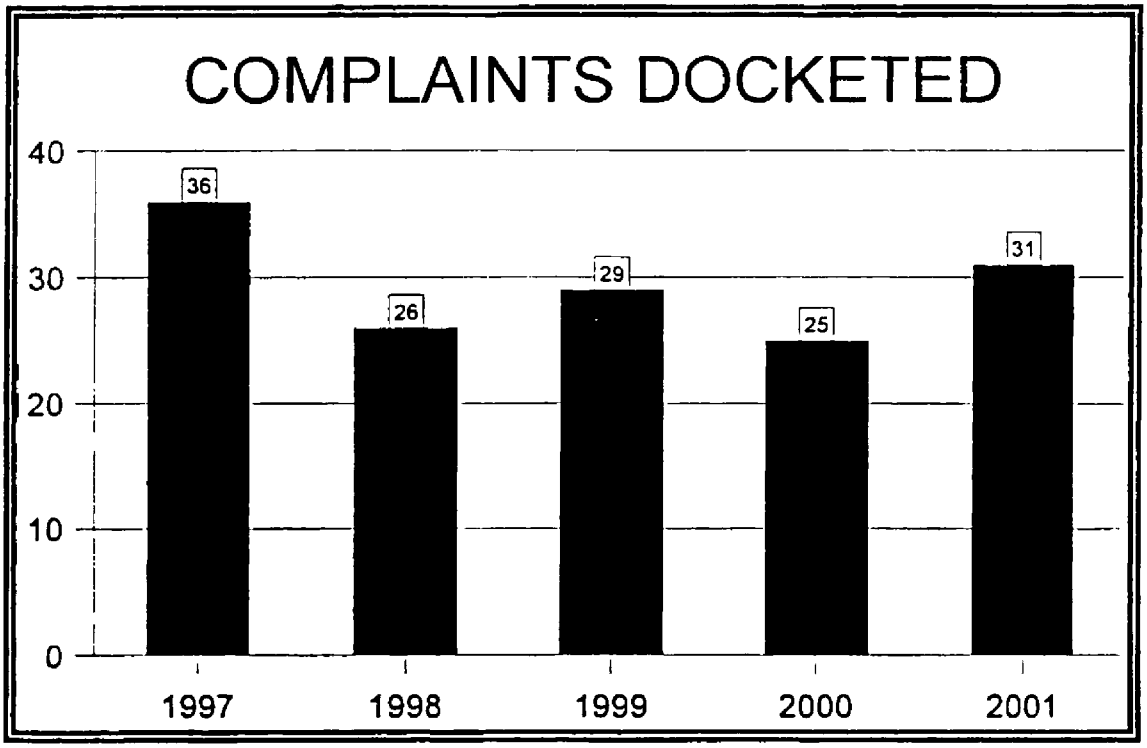
A judge of the district court followed a disqualification policy with respect to several attorneys which involved not hearing newly filed cases and implementation of an "informed consent policy" for ongoing cases in which the judge did not recuse.

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

Appendix B

FIVE-YEAR SUMMARY OF COMPLAINTS RECEIVED AND DOCKETED





Appendix C
Commission on Judicial Qualifications
Statistical Summaries 1997 - 2001

	1997	1998	1999	2000	2001
Total Number of Inquiries	347	322	305	352	393
Rules and Complaint Forms mailed	224	226	238	233	225
Number of Complaints Received	123	123	134	141	159
Number of Complaints Docketed	36	26	29	25	31
Docketed Complaints Pending at beginning of year	9	11	9	6	5
Disposition of Docketed Complaints					
Dismissed, no violation found	1	1	0	0	0
Dismissed after investigation	18	21	19	17	20
Dismissed after investigation w/caution	7	1	6	3	4
Letter of informal advice issued	3	2	4	4	1
Private Cease and Desist issued	1	2	1	1	1
Public Cease and Desist issued	3	0	1	1	0
Notice of Formal Proceedings filed and/or Recommendation to Supreme Court	1	1	2	1	1
Judge resigned	0	0	0	0	0
Dismissed for lack of information	1	0	0	0	0
Referred to Office of Judicial Admin.	0	0	0	0	0
Complaints Pending year end	9	11	6	5	9
Position of Judge Against Whom a Docketed Complaint Was Filed					
District Judge	23	20	23	21	21
District Magistrate Judge	5	1	0	5	2
Municipal Judge	4	2	1	1	0
Judge Pro Tempore	0	2	1	0	1
Hearing Officer/Court Trustee	1	1	0	0	2

CONFIDENTIAL

Kansas Commission on Judicial Qualifications

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

Complaint against a judge

Person making the complaint

Address

City, State, Zip Code Phone Number

I would like to file a complaint against: _____
Name of Judge

Type of Judge (if known) County or City

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

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

Continue on next page

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

If additional space is required, use additional pages as needed and attach them to this page.

I certify that the allegations and statements of fact set forth above are true and correct to the best of my knowledge, information and belief.

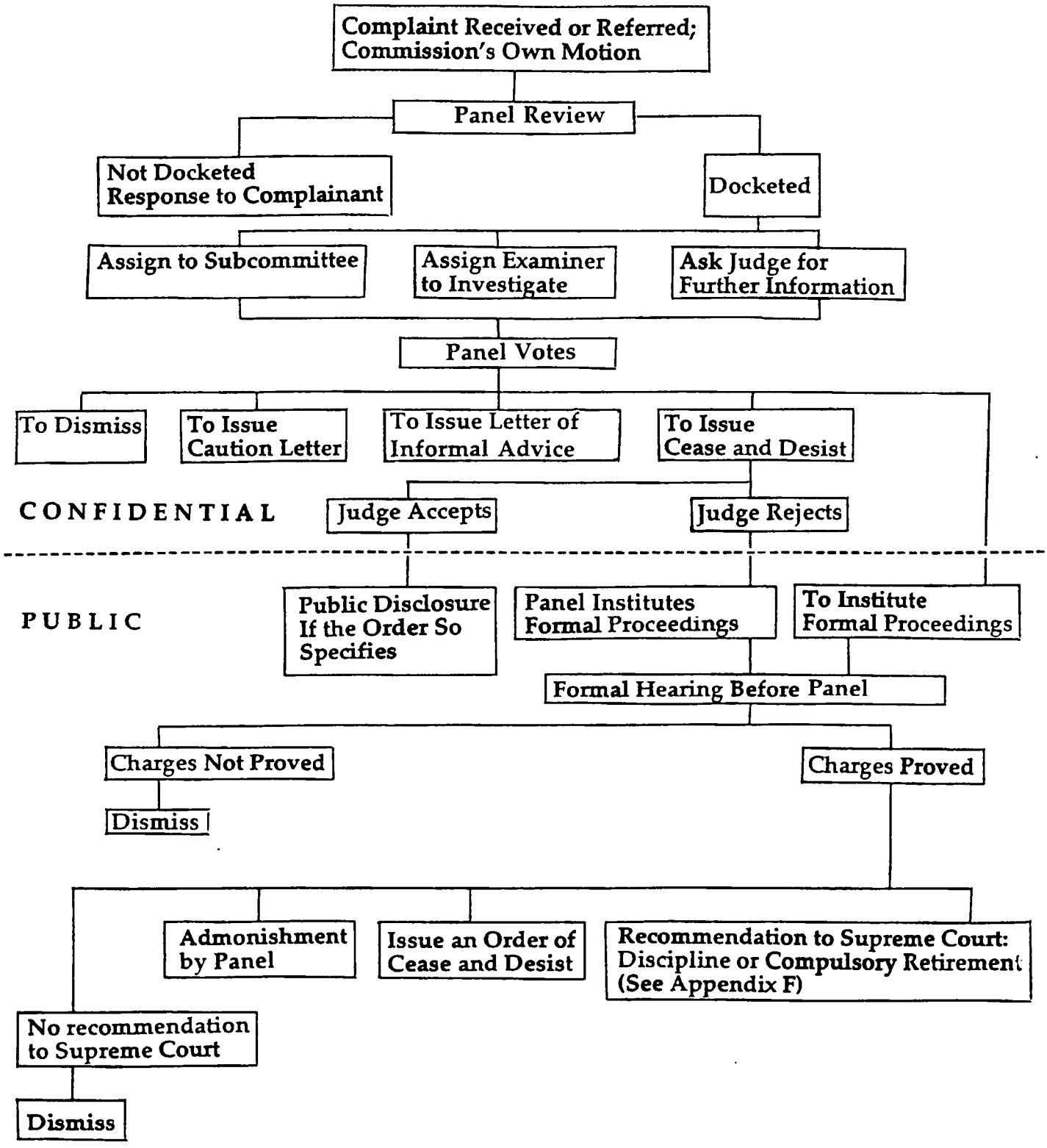
Date

Complainant's Signature

Appendix E

COMMISSION PROCEDURES

RECEIPT OF COMPLAINT THROUGH FORMAL PROCEEDINGS



Appendix F

PROCEEDINGS BEFORE THE SUPREME COURT

REVIEW OF COMMISSION FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS