

# How to Respond to a Judicial Conduct Commission Complaint

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## What We Will Cover

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- The Judicial Conduct Commission Process
  - How Does an Investigation Get Started?
  - What Happens After a Complaint is Filed?
  - What Actions Can the Commission Take?
- How the Commission Looks at the Issues
- Rules for Responding

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## The Judicial Conduct Commission Process

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### How Does an Investigation Get Started?

- The State Commission on Judicial Conduct may consider allegations of judicial misconduct from:
  - A news article;
  - Information received in the course of an investigation;
  - An anonymous source; or
  - An individual.

-- SCJC website FAQs

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## Who Can the SCJC Investigate?

- Justices of the Peace
- Municipal Court Judges
- County Judges with judicial functions
- County Court at Law Judges
- Other Statutory Judges (e.g. probate, criminal magistrates)
- District Judges
- Appellate Justices

-- SCJC website FAQs

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## Who Can the SCJC Investigate?

- But Not:
  - Attorneys
  - Administrative Hearing Officers
  - Private mediators or arbitrators
  - Federal Magistrates and Judges
  - Jailers or Prison officials
  - Law enforcement officials

-- SCJC website FAQs

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## What Can the SCJC **Not** Do?

- Exercise appellate review
- Change the decision or ruling of a court
- Remove a judge from a case
- Order someone to be released from jail or arrested
- Provide legal assistance
- Award damages or monetary relief to an individual

-- SCJC website FAQs

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## What is Judicial Misconduct?

- Judicial misconduct is an action by a judge that brings discredit upon the judiciary or the administration of justice.
  - Violation of the Texas Constitution, the Penal Code, the Code of Judicial Conduct, or Rules of the Supreme Court.
- Examples:
  - See Handout 1

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## What is Not Judicial Misconduct?

- "Wrong" decisions by a judge are not misconduct, even if those decisions appear to fly in the face of the evidence and even if the judge misapplies the law.
- Appeal may be the only remedy for such a situation, or there may be no remedy.

-- SCJC website FAQs

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## What Happens After a Complaint is Filed?

Each complaint is reviewed, analyzed, investigated as appropriate, and presented to the Commission for its consideration and vote.

The Complainant may be asked to provide additional information, or in certain circumstances, appear before the Commission.

All investigative activities of the Commission are confidential.

So the Commission cannot confirm or deny that an investigation is underway.

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## What Happens After a Complaint is Filed?

- A case can take anywhere from a few months to over a year to be resolved. An investigation may include:
  - legal research;
  - obtaining additional information and/or documents from the Complainant;
  - interviewing witnesses;
  - interviewing the Complainant;
  - a letter of inquiry to the judge; and/or
  - under certain circumstances, the Complainant and/or judge may be asked to appear separately before the Commission.

-- SCJC website FAQs

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## Actions the Commission May Take

Once the investigation is complete, the case is presented to the Commission for its consideration.

Options available to the Commission:

- **Administrative Dismissal**
- **Dismissal**
- **Order of Additional Education**

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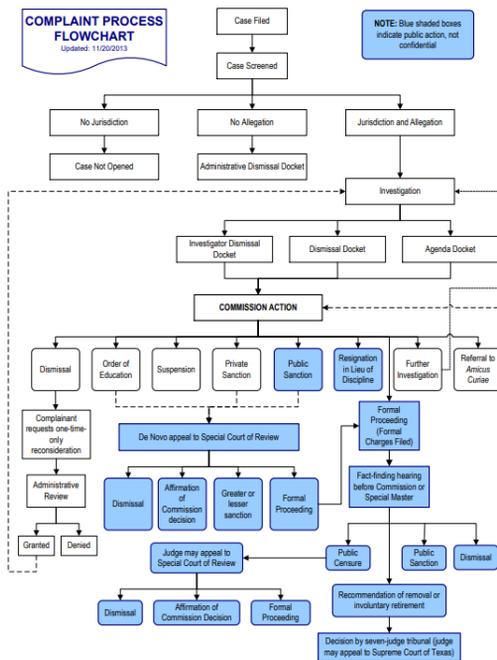
## Options available to the Commission:

Actions the Commission May Take

- **Private Sanction**
  - **Public Sanction**
  - **Suspension**
  - **Recommendation of Suspension to the Supreme Court**
  - **Voluntary Agreement to Resign**
  - **Formal Proceedings**
- See Handout 2

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Complaint Process Flowchart



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## Volume of Complaints

- SCJC receives 1700 – 1800 complaints per year
- There are 803 JPs
  - 21% of the judiciary
  - 20% of the complaints filed
- But in the last year there were 34 disciplinary actions against JPs
  - 41% of the sanctions imposed

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## How the Commission Looks at the Issues

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## Initial Review by Commission Staff

- You may never hear from them at all even if a complaint has been filed.
- They will look at the allegations.
- They may conclude that even if all the allegations are true, there is no judicial misconduct.
- This occurs in 50% of the complaints.

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## Preliminary Investigation by Staff

- They may request the case file from the judge.
- There is contact with the judge but only for the files.
- Judge is not asked to respond to the allegations.
- This may result in an administrative dismissal.
  - This occurs in 25 – 30% of the complaints filed.
- So no response is required in this situation either.

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## Full Investigation

- This is where they ask the judge to respond.
- They show the judge the content of the complaint and everything they've received.
- They may ask the judge to respond to the allegations.
  - For example: "What was your tone?"

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## Full Investigation

- After receiving the judge's response both sides of the case are presented to the Commission either as a potential dismissal or for action (e.g. private reprimand, public reprimand)
- The decision is made by the Commission itself.
  - Not by Staff.

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## Full Investigation

Mere fact that the SCJC is sending a judge questions does not mean they have decided anything.

They want to hear both sides of the story.

They want to know if there was guidance or any mitigating circumstances.

For example, the judge sought advice on the issue from the TJCTC or the SCJC.

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## Full Investigation

The SCJC is not a prosecutorial agency. If there was no misconduct they will dismiss the complaint.

If there was actual misconduct their preference is to resolve it with a private sanction if possible.

Public sanction occurs if they need to send a message to other judges.

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## Full Investigation

- There is no situation where the SCJC will ever sanction a judge without giving the judge an opportunity to present their side of the case.
- They want to hear all of the facts.
  - In most cases there is no dispute as to the facts.
  - But if there is a factual dispute – if the judge can say these allegations did not happen – then the judge needs to present that in as objective and neutral a way as possible.
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## Full Investigation

- They also want to know if there are any mitigating circumstances or a defense.
  - For example, a judge may say “yes, I asked my bailiff to stand up to maintain control of the courtroom.”
  - Or the judge may have a business. The judge may point out that it is okay to have an outside business and he is not using his office to get business. That is a valid defense.

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Conduct That  
Might  
Trigger  
Commission  
Action

- (1) Not following basic procedures (e.g. not setting a case for trial; not signing a judgment; not sending an appeal to the county court; committing a defendant to jail without an indigency hearing);
- (2) Incompetence or ignorance of the law (e.g. issuing an arrest warrant without probable cause; entering a judgment stating that the defendant had failed to appear for trial after conducting a trial at which the defendant was present);

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Conduct That  
Might  
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Commission  
Action

- (3) Sexual harassment or inappropriate sexual conduct including sexting;
- (4) Expressing racist or sexist remarks, including on social media (such as Facebook) even if not identifying oneself as a judge;

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Conduct That  
Might  
Trigger  
Commission  
Action

(5) Publicly commenting  
(including on social media)  
about a pending case or  
cases in other courts;

(6) Endorsement of a  
candidate for office  
(including on social media);

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Conduct That  
Might  
Trigger  
Commission  
Action

(7) Hearing cases where the  
judge should have recused  
(e.g. case filed by a family  
member);

(8) Getting into an  
altercation with a member of  
the public (or other irate  
conduct).

-- See Handout 3: Recent Private Disciplinary Actions Against  
JPs

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Conduct That  
Might Trigger  
Commission  
Action

- There is no way to avoid having a complaint filed!
- But you can avoid having a **valid** complaint filed!

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## Rules for Responding

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## Rule No. 1:

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- Do NOT Ignore a Communication from the Commission!
- It will not end well!

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## Rule No. 2:

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- Be totally candid with the Commission!
- They will conduct a thorough factual investigation.
- They are experienced and not likely to be misled!

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## Rule No. 3:

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- Assess the Allegations
  - Many are without merit or the product of an angry litigant (or lawyer!)
  - But some are not!
- Important to determine whether there is any merit to the allegations or not
- If you're not sure, get advice from a neutral third party
  - Another judge
  - Lawyer
  - Someone with experience

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## Rule No. 4:

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- Consider the type of conduct
  - Political endorsement?
  - Losing judicial composure (going off the rails)?
  - Or not knowing the law that you should know?
- Some issues are straightforward; some are complex

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## Rule No. 5:

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- If it is a legal issue, don't assume you did something wrong!
- You might need to explain the law to them!
- If you're confident you followed the law, explain fully!

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## Rule No. 6:

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- If you did make a mistake, admit it and learn from it!
- Show the Commission that you want to be a better judge!
- If they are satisfied they won't see you again, you are much more likely to receive a private rather than a public sanction.

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## Rule No. 7

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- Always maintain appropriate judicial demeanor and temperament and dress like and sound like a judge on the bench!
- Make the parties feel like they were listened to!

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## Rule No. 8

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- Avoid making statements that tend to show bias or prejudice against a class of litigants based on race, sex, religion or sexual orientation.
- Social media is not your friend
  - Even if you are just responding to comments posted by others and do not identify yourself as a judge, comments on social media can lead to a complaint.
- This may help avoid having to use Rules 1 – 7!!

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