

SUMMARY
of
OVERSIGHT OF JUDICIAL CONDUCT IN TENNESSEE
1971 to 2011

Administrative Office of the Courts

September 2011

All Tennesseans have a right to have their civil and criminal cases heard and decided by fair and impartial judges who base their decisions on the law and the facts of the case. They also have a right to expect that all of Tennessee's judges and judicial officers will conduct themselves in a manner consistent with the Code of Judicial Conduct. To hold judges accountable, the members of the public also have a right to complain when they believe that a judge's conduct does not comply with the Code of Judicial Conduct or with other applicable statutes and constitutional provisions and to have their complaints promptly and fairly addressed by an impartial, knowledgeable, and responsible body.

By constitution, statute, and common law, the Tennessee Supreme Court is directly responsible for the day-to-day operation of the state's courts and the performance of the lawyers and judges in these courts. The Court has plenary constitutional power to oversee the performance of judges and lawyers that cannot be shared with or delegated to other branches of government.¹ However, the Court does not have the power to remove judges from office. Only the General Assembly, acting in accordance with Article VI, Section 6 of the Tennessee Constitution has this power. The General Assembly cannot delegate this responsibility to any other branch or agency of government.

The General Assembly may create by statute any procedure it deems proper to assist it in exercising its power under Article VI, Section 6. By the same token, the Supreme Court may adopt any rule or rules it deems proper to enable it to exercise its power to oversee and, if necessary, discipline judges in all courts of this state. The Constitution of Tennessee does not prevent the different branches of government from cooperating when it is in the interests of the public to do so.

During the past forty years, the General Assembly and the Supreme Court have worked together to create a process to oversee judicial conduct in Tennessee that serves the legitimate needs of Tennessee's residents and that enables both the General Assembly and the Supreme Court to discharge their constitutional obligations. The following is a summary of the significant legislation and events during the past forty years that have brought about the system of judicial oversight that is being used today.

1971 – 1978

THE JUDICIAL STANDARDS COMMISSION

Prior to 1971, no formal procedure existed to address the problems created when a sitting judge became physically or mentally incapacitated. When this circumstance arose, judges usually declared that they were temporarily disabled, and a special judge would be appointed for the period of the judges' disability. The disabled judge continued to draw the regular judge's salary, and the temporary judge would also be paid the same salary. It was not uncommon for a judge's disability to last several years.

¹*In re Bell*, ___ S.W.3d ___, 2011 WL 2304191 (Tenn. 2011).

The General Assembly decided to address this circumstance in 1971 by creating the Judicial Standards Commission.² This Commission had nine members – three (3) judges chosen by the Tennessee Supreme Court, three (3) licensed attorneys chosen by the Tennessee Bar Association, and three (3) other persons who could be lay persons or licensed attorneys chosen by the General Assembly. Staff support for this Commission was provided by the Executive Secretary of the Tennessee Supreme Court.³

The Commission had the power to “investigate the mental, physical, and/or moral fitness of any incumbent judge in Tennessee.” If the Commission determined that the charges against a judge were groundless, it could consider the matter closed. If the Commission determined that a judge’s conduct did not warrant forced retirement or removal but that the judge was “behaving in such manner as to bring discredit upon the judiciary or embarking on a course of conduct likely to have such results,” Tenn. Code Ann. § 17-816 authorized representatives of the Commission to meet privately with the judge and authorized the Commission to consider the matter closed if the judge rectified his or her conduct.

If the Commission’s preliminary investigation established that the judge was either “probably unable to perform the duties of his [or her] office” or “probably guilty of willful misconduct in office or willful and persistent failure to perform satisfactorily,” the judge was notified of the Commission’s conclusion and given ten days within which to request a hearing or to resign or retire.

If a judge who received such a notice from the Commission resigned or retired, no further action was taken. If the judge requested a hearing, the Commission held a hearing at which a “complete record of the proceedings” was kept. If the judge did not resign, retire, or request a hearing, or if, following the hearing, a majority of the Commission determined that the judge should be retired or removed from office, a complete record of the Commission’s proceedings was delivered to the Speaker of the Senate and the Speaker of the House of Representatives along with the Commission’s findings and recommendations.

Upon receipt of the record and the Commission’s findings and recommendations, the Speakers appointed five (5) members of their respective chambers to a joint committee to consider the retirement or removal of the judge. The judge had a right to be heard by the joint committee, and a report of the committee’s findings and recommendations was presented to the House and Senate for a vote. Tenn. Code Ann. § 17-814 provided that “[i]f two-thirds ($\frac{2}{3}$) of the entire membership of the senate and house of representatives, with each house voting separately, vote to retire the judge in question or to remove him [or her] from office, the retirement or removal shall be effective on the last day of the month following the concurrence of each house.”

²Act of Apr. 27, 1971, ch. 101, 1971 Tenn. Pub. Acts 187 (codified as amended at Tenn. Code Ann. § 17-801 through -816 (Supp. 1978)).

³The Executive Secretary of the Tennessee Supreme Court later became the Administrative Office of the Courts.

The 1971 statutes creating the Commission required that all the Commission's proceedings be confidential and that all testimony and evidence presented to the Commission was privileged. If the charges against the judge were found to be groundless or if the judge remedied his or her conduct, Tenn. Code Ann. § 17-816 directed the Commission to "keep no record pertaining thereto." The Commission's proceedings became public only when the Commission recommended to the General Assembly that a judge should be removed.

THE TENNESSEE OPEN MEETINGS ACT

The Tennessee Open Meetings Act (commonly referred to as the "Sunshine Law") became effective on May 1, 1974. Premised on the policy that "formation of public policy and decisions is public business," the Act required meetings of governing bodies to be open to the public. The chairman of the Judicial Standards Commission requested the Attorney General to prepare an opinion regarding whether the Act applied to meetings "where the conduct of a judicial officer is being investigated." On January 6, 1978, the Attorney General replied that the Act repealed prior conflicting statutes, including the statutes making the Commission's proceedings confidential, and, therefore, that the Commission's hearings were governed by the Act.⁴

THE ADOPTION OF THE "JUDICIAL CANONS" AND THE FIRST CODE OF JUDICIAL CONDUCT

On July 8, 1974, the Tennessee Supreme Court adopted Tenn. Sup. Ct. R. 43, the first formal code of principles governing the conduct of judges in Tennessee. These canons were phrased in aspirational, as opposed to proscriptive, terms. While they contained no process or mechanism for their enforcement, Tenn. Sup. Ct. R. 43, Section 31 empowered the Judicial Standards Commission to "issue opinions as to whether certain conduct does or does not violate a particular canon or canons."

On December 2, 1974, the Tennessee Supreme Court replaced the Judicial Canons which were only six months old with the Code of Judicial Conduct patterned after the Model Code of Judicial Conduct adopted by the American Bar Association in 1972. Like the earlier Judicial Canons, the Code of Judicial Conduct that appeared in Tenn. Sup. Ct. R. 43 did not contain an enforcement procedure but empowered the Judicial Standards Commission to "issue opinions as to whether certain conduct does or does not violate a particular canon or canons."

⁴Op. Tenn. Att'y Gen. 78-4, 1978 WL 26946 (Jan. 6, 1978).

THE PROCEEDINGS INVOLVING JUDGE CHARLES GALBREATH

Following the creation of the Judicial Standards Commission, the first public proceeding to remove a judge from office took place in 1978. It involved Judge Charles Galbreath, a member of the Court of Criminal Appeals. This proceeding highlighted the substantive and procedural shortcomings in the statutes creating the Commission and defining its procedures.

The Commission eventually identified seven grounds for Judge Galbreath's removal from office. These grounds included (1) his 1976 letter on official stationery reprinted in the *Hustler* magazine discussing his preferred sex acts in vulgar, colloquial terms, (2) his 1977 arrest in Columbus, Ohio, (3) his 1977 press conference criticizing a "sting" conducted by the Nashville Police Department, (4) his decision to permit his law clerk to engage in the part-time practice of law, (5) the manner in which he prepared opinions and worked with his colleagues on the Court of Criminal Appeals, (6) his derogatory public statements regarding the Commission, and (7) his alleged breach of a privately negotiated agreement to resign in return for the Commission's agreement to drop the charges against him.

Because of the Attorney General's January 6, 1978 opinion regarding the application of the Sunshine Law to the Commission, the Commission held a public hearing from March 8-10, 1978 regarding Judge Galbreath. At the conclusion of this hearing, the Commission voted unanimously to recommend that Judge Galbreath be removed from office on all seven grounds included in its preliminary findings. The Commission then forwarded the record of its proceedings and its findings to the Lieutenant Governor and the Speaker of the House of Representatives.

Upon receipt of the record and the Commission's recommendation that Judge Galbreath be removed from office, the Lieutenant Governor and the Speaker of the House each appointed five (5) legislators to a Special Joint Committee on Judicial Standards. The Committee determined that it would not consider three of the seven charges against Judge Galbreath because they involved conduct that was not related to actions that Judge Galbreath had taken in his judicial capacity.

The Special Joint Committee held hearings from April 10-12, 1978, at which both Judge Galbreath and the Judicial Standards Commission presented witnesses. Following the conclusion of the hearing, the Special Committee determined that Judge Galbreath's letter to the *Hustler* was "inappropriate" and that other public comments attributed to Judge Galbreath were either "improper" or "inappropriate." However, the Committee determined that none of the grounds relied upon by the Judicial Standards Commission were sufficient to warrant Judge Galbreath's removal.⁵ With specific regard to the privately negotiated agreement that Judge Galbreath would resign, the Committee determined that

⁵Only three of the Special Committee's ten members voted to remove Judge Galbreath from office based on his 1976 letter to the *Hustler* magazine.

the “secret agreement is contrary to the public policy of this state and interferes with the public’s right to know the operations of its government.”

The Special Committee formally transmitted its report to the Lieutenant Governor and the Speaker of the House of Representatives. The Senate took up the Special Committee’s report on April 26, 1978. Following a debate, the Senate decided to vote on only two of the specific grounds relied upon by the Judicial Standards Commission. By a vote of 18-4-1, the Senate determined that Judge Galbreath should be removed based on his letter to the *Hustler*. Then, by a vote of 18-11-2, the Senate voted to remove Judge Galbreath based on his public characterization of the members of the Judicial Standards Commission as “sons of bitches.” These results were four votes short of the number required to remove Judge Galbreath from office because Article VI, § 6 of the Constitution of Tennessee requires a super-majority vote of two-thirds of the members of each chamber. The House of Representatives never voted on Judge Galbreath’s removal.

On April 27, 1978, the Senate and House of Representatives separately passed Senate Resolution 102 and House Resolution 210 censuring Judge Galbreath on the ground that his conduct “flouted the letter and spirit of the Code of Judicial Conduct.” Shortly thereafter, Judge Galbreath announced his resignation from the Court of Criminal Appeals and his intention to run for a seat in the General Assembly. When he stepped down, Judge Galbreath held a “derobing” ceremony in the courtroom of the Supreme Court Building in Nashville.

THE 1978 SUNSHINE LAW AMENDMENTS

The proceedings involving Judge Galbreath had called into question the application of the Sunshine Law to the Judicial Standards Commission. In response, Senator Victor Ashe and Representative Tom Jensen introduced legislation to require the Commission to comply with the Sunshine Law and to strip away the confidentiality of the complaints and the Commission’s proceedings. However, a majority of legislators decided that it would be appropriate to maintain confidentiality up to the point when the Commission sends its formal recommendations to the General Assembly.

Both the Senate and the House of Representatives eventually approved a conference committee report reflecting this decision.⁶ This legislation provided (1) that all complaints, preliminary investigations, and related notices were “privileged;” (2) that no person could be held civilly liable for testimony given to the Commission; and (3) that all proceedings, testimony, and evidence presented to the Commission was “privileged.” The Act removed two of the three references to the confidentiality of the Commission’s proceedings but retained the requirement of confidentiality prior to the Commission’s recommendation to the General Assembly.

⁶Act of Apr. 26, 1978, ch. 946, 1978 Tenn. Pub. Acts 1494. The Governor permitted the legislation to become law without his signature.

1979 – PRESENT

THE CREATION OF THE COURT OF THE JUDICIARY IN 1979

The shortcomings in existing law that were brought to light during the 1978 proceedings involving Judge Galbreath also prompted the General Assembly, with the approval of the Tennessee Supreme Court, to prepare new legislation pertaining to judicial oversight. The purposes of this legislation were to replace the Judicial Standards Commission statutes that had been adopted in 1971 and to provide the General Assembly with a more efficient way to exercise its removal power under Article VI, Section 6.

The most significant features of this proposal were:

- (1) It replaced the 9-member Judicial Standards Commission with an 11-member Court of the Judiciary. Six (6) of the members were judges appointed by the Tennessee Supreme Court; three (3) of the members were practicing lawyers appointed by the Tennessee Bar Association; and two (2) were members of the public who were not lawyers or judges – one (1) appointed by the Lieutenant Governor and one (1) by the Speaker of the House.
- (2) It gave the Court of the Judiciary the power to select its own presiding judge.
- (3) It gave the court broad jurisdiction to investigate, hear, and determine charges sufficient to warrant discipline or removal.
- (4) It provided a definition of eight “judicial offenses” that could warrant discipline or removal.
- (5) It provided that judges could be removed because of physical or mental disabilities but that these complaints would be “confidential and privileged.”
- (6) It empowered the court to conduct preliminary investigations that would be “confidential and privileged.”
- (7) It stated that the court’s proceedings became subject to the Sunshine Law and the Public Records Act only after the presiding judge found probable cause to believe that the complaint was not “frivolous and unfounded” and was “within the scope of the court’s inquiry.”
- (8) It established a procedure for notice, hearings, and formal decisions with regard to “major offenses.”
- (9) In addition to the power to recommend removal, it gave the court the power to dismiss charges, to issue a formal reprimand, to issue a cease and desist order, or to suspend a judge for up to thirty (30) days.

- (10) It provided for an appeal of the court's decisions to the Tennessee Supreme Court.
- (11) It defined the process for the General Assembly's review of recommendations that a judge be removed.
 - It provided for a 10-member special committee.
 - It required an appeal de novo with no presumption of correctness based on the record of the Court of the Judiciary Proceedings.

During the General Assembly's debates regarding this proposal, the bill's Senate sponsor pointed out that the Judicial Standards Commission had "felt handicapped" during the proceedings involving Judge Galbreath. The chair of the Senate Judiciary Committee stated that removing the confidentiality of the proceedings once they reached the formal accusation stage "preserved the intent of the Sunshine Law" and "protect[ed] judges from frivolous complaints or complaints beyond [the court's] authority." The Senate also defeated an amendment that would have transferred the Supreme Court's appointing authority to the Governor. Both the House and the Senate passed the legislation overwhelmingly, and it took effect on May 23, 1979.⁷

INCREASES IN THE SIZE OF THE COURT OF THE JUDICIARY

There are no model or uniform laws prescribing the composition or size of commissions created to oversee the conduct of state judges. In sixteen (16) states, including Tennessee, the commission has been created by statute. In twenty-six (26) states, the commission has been specifically authorized by the state constitution. In a number of these states, the state constitution empowers the legislature to establish the number or composition of the oversight commission. In eight (8) states, the oversight commission has been created by a rule promulgated by the state's highest court. *See* Appendix A.

During the thirty years since the creation of the Court of the Judiciary, the General Assembly has increased its membership from nine (9) to sixteen (16). In 1981, the General Assembly added three (3) general sessions judges to be appointed by the Supreme Court.⁸ In 1995, the General Assembly added a third public member to be appointed by the Governor.⁹ In 1999, the General Assembly required that at least one of the general sessions

⁷Act of May 16, 1979, ch. 356, 1979 Tenn. Pub. Acts 833.

⁸Act of May 22, 1981, ch. 425, 1981 Tenn. Pub. Acts 618.

⁹Act of Apr. 26, 1995, ch. 208, § 4, 1995 Tenn. Pub. Acts 314, 314.

judge positions must be held by one (1) judge regularly exercising juvenile jurisdiction.¹⁰ In 2004, the General Assembly added one (1) municipal court judge to be appointed by the Supreme Court.¹¹

THE STREAMLINING LEGISLATION IN 1995

In 1995, the Court of the Judiciary, the Tennessee Supreme Court, and the Administrative Office of the Courts requested the General Assembly to amend the Court of the Judiciary statutes to improve efficiency. This proposal:

- (1) Increased the membership of the court by adding a third public member to be appointed by the Governor.
- (2) Authorized the court to impose “private admonitions” and to enter into “deferred discipline agreements.” Deferred discipline agreements apply only to “minor misconduct” that can be addressed “through treatment or a rehabilitation program” in which the judge agrees to participate.
- (3) Permitted the court to appoint an attorney as disciplinary counsel and authorized the court to ask the Board of Professional Responsibility to serve this role.
- (4) Defined the duties and responsibilities of the disciplinary counsel.
- (5) Permitted the disciplinary counsel to dismiss frivolous complaints.
- (6) Permitted the court to separate the investigative function and the hearing function by dividing itself into 3-member investigative panels and 12-member hearing panels.

The House passed this legislation by a vote of 91-0, and the Senate likewise passed it by a vote of 31-0.¹² It became effective on September 1, 1995.

THE REVISED CODE OF JUDICIAL CONDUCT IN 1997

In August 1990, the American Bar Association (“ABA”) adopted its revised Model Code of Judicial Conduct. The Tennessee Supreme Court appointed a commission to study

¹⁰Act of May 3, 1999, ch. 151, 1999 Tenn. Pub. Acts 339.

¹¹Act of May 20, 2004, ch. 914, § 3, 2004 Tenn. Pub. Acts 2082, 2091.

¹²Act of Apr. 26, 1995, ch. 208, 1995 Tenn. Pub. Acts 314.

the revised code and to make recommendations to the Court. The commission solicited public comments and, in 1993, recommended the adoption of a modified version of the ABA's model code. The Court submitted the commission's recommendations to the Tennessee Judicial Conference for review and comment and in February 1996 released the proposed revised code for final public comment. On January 27, 1997, the Court adopted a revised version of the ABA Model Code of Judicial Conduct.

THE CLARIFYING LEGISLATION IN 2002

In 2002, the General Assembly further defined the sanctions that the Court of the Judiciary could impose by replacing "private admonitions" with "private reprimands" and "private censures." The General Assembly also empowered the court to impose "public reprimands" and "public censures" and defined all of these terms. The legislation also listed ten (10) factors for the Court of the Judiciary and its investigative panels to use when determining the sanction or combination of sanctions most appropriate for the particular conduct at issue.

This legislation continued to vest in the disciplinary counsel the power to dismiss complaints that failed to allege "specific facts . . . which would cause a reasonable person to believe that there is a substantial probability that the conduct involved violates § 17-5-302." However, it gave the person filing the complaint the right to appeal the dismissal of his or her complaint to the investigative panel assigned to the case.

The Senate passed the legislation by a vote of 30-0 after approving an amendment to assure that complaining parties had a right to appeal the dismissal of their complaint to an investigatory panel. The House passed the proposal by a vote of 90-1-1. It took effect on April 3, 2002.¹³

THE BUDGET FOR THE COURT OF THE JUDICIARY

Prior to the legislation creating the disciplinary counsel position, the funding for the operation of the Court of the Judiciary came from the Judicial Branch's general operating funds. The General Assembly appropriated no funds for the operation of the court. Accordingly, the burden of the investigative and staff work fell to the presiding judge of the court and others who volunteered their time and resources to assist the court. In the budget for the 1996-1997 fiscal year, the General Assembly – for the first time – appropriated \$100,000 for the operation of the court. This appropriation was combined with \$29,000 made available by the Supreme Court to provide the Court of the Judiciary with a \$129,000 operating budget. Between the 2000-2001 and 2010-2011 fiscal years, the appropriation to the Court of the Judiciary has increased from \$97,100 to \$272,000.

¹³Act of Mar. 25, 2002, ch. 564, 2002 Tenn. Pub. Acts 1547.

Until the 1996-1997 fiscal year, the Court of the Judiciary performed its duties without a staff. While the Clerk of the Appellate Courts acted as the court's clerk, the investigative and other support work was performed by the presiding judge of the court and others who volunteered to assist the presiding judge. Some of these costs were offset with funds made available by the Administrative Office of the Courts. During the 1996-1997 fiscal year, the General Assembly, for the first time, appropriated \$100,000 for the operation of the Court of the Judiciary. The court has used these funds to defray its expenses. The chief expense is obtaining the services of a qualified lawyer to perform the required investigations in response to the complaints received by the court. Initially, the court contracted with private attorneys – generally retired judges – to perform these investigations. More recently, the court has contracted with a private attorney to serve as full-time chief disciplinary counsel. The chief disciplinary counsel is supported by a part-time assistant counsel and a part-time investigator.

THE JUDICIAL ETHICS COMMITTEE

The Judicial Standards Commission began issuing judicial ethics opinions in 1982.¹⁴ On May 20, 1988, the Tennessee Supreme Court amended Tenn. Sup. Ct. R. 9 § 26 to create a 5-member Judicial Ethics Committee comprised of one (1) intermediate appellate judge, one (1) trial judge from each Grand Division, and one (1) general sessions judge. The Committee was empowered to issue formal ethics opinions in response to a judge's request, and Section 26.6 provided that formal ethics opinions "shall constitute a body of principles and objectives upon which judges can rely for guidance." On April 25, 2006, the Court re-adopted Tenn. Sup. Ct. R. 9 § 26.6 as Tenn. Sup. Ct. R. 10A, and on October 31, 2006, the Court increased the size of the committee to seven (7) members by adding one (1) juvenile court judge and one (1) municipal court judge. All members of the committee are required to be licensed to practice law. Between 1982 and June 2011, the committee released over one hundred and twenty-five (125) opinions. The opinions handed down between 1997 and 2011 can be found at <http://www.tncourts.gov/administration/judicial-resources/ethics-opinions>.

THE PROPOSED REVISIONS TO THE CODE OF JUDICIAL CONDUCT

In 2003, the American Bar Association appointed a committee to study proposed revisions to its 1990 Model Code of Judicial Conduct. In February 2007, the American Bar Association adopted a revised Model Code of Judicial Conduct. In January 2009, the Tennessee Bar Association ("TBA") formed a committee of lawyers and judges to review the ABA's 2007 Model Code of Judicial Conduct and to recommend modifications to

¹⁴See Gregory D. Smith, *Tennessee Judicial Ethics Opinions Handbook* (2011) (pointing out that the first ethics opinion was released in 1982).

Tennessee's Code of Judicial Conduct. The TBA committee distributed its proposals for public comment and in October 2010 presented its recommendations to the Tennessee Judicial Conference. On February 25, 2011, the TBA filed a petition with the Tennessee Supreme Court requesting the Court to adopt an Amended Tennessee Code of Judicial Conduct. On March 11, 2011, the Court entered an order inviting public comments regarding the TBA's proposal. The deadline for receiving these public comments is November 1, 2011.

SUMMARY OF DISCIPLINARY ACTIONS SINCE 1979

The following is a summary of the dispositions of complaints filed against judges that resulted in either private or public discipline. The records of the Court of the Judiciary's work for several of the years are not available. A chart of the public and private discipline of state and local judges for the twenty (20) years between August 1991 and August 2011 is attached as Appendix B.

RECOMMENDATIONS FOR REMOVAL

Prior to the creation of the Judicial Standards Commission in 1971, the last judge to be removed from office was Judge Raulston Schoolfield, a trial judge exercising criminal jurisdiction in Hamilton County. After the General Assembly impeached Judge Schoolfield in 1958, he was disbarred by the Tennessee Supreme Court. *See Schoolfield v. Tennessee Bar Ass'n*, 209 Tenn. 304, 353 S.W.2d 401 (1961). Judge Schoolfield was later elected to the general sessions bench in Hamilton County. At that time, general sessions judges were not required to be licensed attorneys.

Since 1971, the Judicial Standards Commission and the Court of the Judiciary have recommended the removal of the following five (5) judges:

(1) In 1978, the Judicial Standards Commission found that Tennessee Court of Criminal Appeals Judge Charles Galbreath had committed seven (7) serious violations of the Code of Judicial Conduct that warranted his removal from office. A special joint committee of legislators declined to recommend Judge Galbreath's removal. When the Senate vote to remove Judge Galbreath did not receive a constitutionally required two-thirds vote of the members, the House of Representatives declined to vote on Judge Galbreath's removal. However, both the Senate and the House of Representatives passed resolutions censuring Judge Galbreath.

(2) In 1983, the Court of the Judiciary found that Wayne County General Sessions Judge Dewey G. Harper had committed five (5) serious violations of the Code of Judicial Conduct that warranted his removal from office. There is no record that either the Senate or the House of Representatives considered or voted on Judge Harper's removal. Accordingly, it is presumed that Judge Harper either resigned or retired following the action of the Court of the Judiciary.

(3) In 1986, the Court of the Judiciary determined that Shelby County General Sessions Judge Ira Henderson Murphy had been convicted in the United States District Court for the Western District of Tennessee on eleven (11) counts of mail fraud, one (1) count of perjury, and one (1) count of obstruction of justice. On December 10, 1986, the court recommended that Judge Murphy be removed from office. The Tennessee Supreme Court affirmed the recommendation on March 3, 1987. On April 13, 1987, following a

hearing on April 9, 1987, a special joint committee of legislators recommended that Judge Murphy be removed from office on five (5) grounds. On April 30, 1987, the Senate voted to remove Judge Murphy on three (3) of the five (5) grounds. On the same day, the House of Representatives voted to remove Judge Murphy on all five (5) grounds. *See In re Murphy*, 726 S.W.2d 509 (Tenn. 1987).

(4) On April 1, 1993, the Court of the Judiciary voted unanimously to recommend the removal of Chancellor David W. Lanier of Dyersburg following his conviction in the United States District Court for the Western District of Tennessee on seven (7) charges related to “sexual assaults on named victims.” On April 19, 1993, a special joint committee unanimously recommended that Chancellor Lanier be removed. On April 21, 1993, the Senate voted unanimously to remove Chancellor Lanier from office. On the same day, the House of Representatives likewise voted unanimously to remove Chancellor Lanier.

(5) On February 25, 1998, the Court of the Judiciary determined that General Sessions Judge Billy Wayne Williams of Lauderdale County had committed three (3) serious violations of the Code of Judicial Conduct and recommended unanimously that he should be removed from office. There is no record that either the Senate or the House of Representatives considered or voted on Judge Williams’ removal. Accordingly it is presumed that Judge Williams either resigned or retired following the action of the Court of the Judiciary.

SUSPENSIONS

Based on the available records, between April 1988 and June 2010, nine (9) state and local judges were suspended from the bench. In addition, four (4) state and local judges were summarily suspended upon being indicted.

PUBLIC DISCIPLINE

Based on the available records, between April 1992 and June 2011, thirty-one (31) state and local judges have received public discipline in the form of a public censure or a public reprimand.

PRIVATE DISCIPLINE

Based on the available records, forty-six (46) state and local judges have received private discipline in the form of either a private reprimand, a private censure, or a cease and desist order. In addition, thirty-six (36) state and local judges have entered into deferred discipline agreements as defined in Tenn. Code Ann. § 17-5-301(g)(1) (2009) with the Court of the Judiciary.

JUDGES LEAVING THE BENCH

Based on the available records, forty-six (46) state and local judges, not including the judges whose removal was recommended, have left the bench after the filing of a disciplinary complaint. These departures have been due to (1) resignation, (2) retirement, (3) loss of an election, or (4) death.

APPENDIX A

Creation of State Judicial Conduct Commissions*

By Constitution

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Delaware
Florida
Georgia
Illinois
Indiana
Kentucky
Louisiana
Maryland
Michigan
Mississippi
Missouri
Montana
Nebraska
Nevada
New Mexico
New York
Pennsylvania
Texas
Washington
Wyoming

By Statute

Connecticut
Idaho
Iowa
Massachusetts
Minnesota
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Rhode Island
South Dakota
Tennessee
Utah
Virginia
Wisconsin

By Court Rule

Hawaii
Kansas
Maine
New Hampshire
New Jersey
South Carolina
Vermont
West Virginia

*This information was compiled by the Center for Judicial Ethics of the American Judicature Society. See Am. Judicature Soc'y, *Commission Membership* (rev. Mar. 2007), available at <http://www.ajs.org/ethics/pdfs/Commissionmembership.pdf>.

APPENDIX B
Judicial Discipline – August 1991 to August 2011

Period	Complaints	Summary Dismissal	Dismissal After Review	Complaint W/drawn	Private Discipline	DDA	Left Bench	Public Reprim.	Suspension	Rec. Removal	Other
8/91-8/92	161				2			1	1		
8/92-8/93	174				2			2		1	
8/93-8/94	181							1			
8/94-8/95	200	109			5			2	2		
8/95-8/96	209										
8/96-8/97	190				4		6				
8/97-8/98	224									1	
8/98-8/99	197								1		
8/99-8/00	202					1					
8/00-8/01	238	220		2	1	5	2				
8/01-8/02	312										
8/02-8/03	250	268		1	3	3	6	1	3		1
8/03-8/04	333										
8/04-8/05	345	257	177		2	3		1			
8/05-8/06	286	200	70		6	2	3	1			
8/06-8/07	330	240	71		10	2	6	3			
8/07-8/08	310	208	72		5	6	5	4			
8/08-8/09	348	270	60	2		6	6	5			
8/09-8/10	344	257	32	5		5	10	1	1		
8/10-8/11	359	181	133		6	3	2	9			
TOTAL	5,193	2,210	615	10	46	36	46	31	8	2	1