The Complaint Process of the State Commission on Judicial Conduct

STATE COMMISSION ON JUDICIAL MISCONDUCT

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Preface

Today's discussion will provide a general outline regarding the Texas State Commission on Judicial Conduct, its authority and jurisdiction. We will also discuss the complaint process, requirements, and outcomes. Finally, we will analyze one area of misconduct. However, please note I am not affiliated with or employed by the SCJC.

Reference

Office of State Commission on Judicial Conduct

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(Slides 1-27)

Governing Law

All complaints filed with the State Commission on Judicial Conduct are governed by the following statutes:

- Texas Constitution, Art. 5, Sec.1-a;
- Texas Government Code, Ch.33;
- Texas Procedural Rules for the SCJC;
- Texas Code of Judicial Conduct;
- SCJC Operational Guidelines.

The Commission

The Commission is comprised of thirteen (13) appointed volunteers who serve staggered six (6) year terms. Of the thirteen members, six are judges appointed by the Texas Supreme Court. Two are attorneys, who are NOT judges, appointed by the State Bar of Texas. The final five members are citizens, who are NOT judges or attorneys, appointed by the Governor of Texas. All members appointed to the Commission on Judicial Conduct must be approved by the Texas State Senate.

Commission on Judicial Conduct Docket

The Commission was created by Constitutional Amendment in 1965. It is an independent state agency responsible for investigating allegations of judicial misconduct or permanent disability, and for disciplining judges.

Jurisdiction

The SCJC has the authority to investigate the following Judges:

- Municipal Judges
- Magistrates
- Justices of the Peace
- Constitutional County Judges
- County Court at Law Judges

Jurisdiction cont…

- Statutory Probate Judges
- District Judges
- Appellate Judges
- Retired/Former Judges
- Associate Judges and Masters
- Retired/Former Judges, Sitting by Assignment.

The Commission lacks jurisdiction to investigate the following Officials:

- Attorneys
- Administrative Hearing Officers
- Mediators/Arbitrators
- Federal Judges/Magistrates

The Commission lacks jurisdiction to investigate the following Officials:

- Prison Officials or Jail Conditions
- State Agency Employees
- Law Enforcement Officials
- County or District Clerks

Judicial Misconduct

Defined as any action by a judge that brings discredit on the judiciary or the administration of justice. The action may include a violation of the Texas Constitution, Texas Penal Code, Code of Judicial Conduct, or any rule established by the Supreme Court of Texas.

Examples of Judicial Misconduct

- Inappropriate or demeaning courtroom conduct such as yelling or profanity;

  (i.e. yelling, profanity, bias, racial slurs)(SCJC ‘05).
- Using the prestige of the judicial office to advance any private interest;
- Ex-parte communications;

Examples of Judicial Misconduct cont…

- Public comments regarding any matter pending before the court;
- Hearing a case in which the judge holds a financial interest;
- Ruling on a case where in any of the parties are within the Judge’s prohibited degree of kinship;

Judicial Misconduct cont…

- Alcohol, drug, or mental health issues;

  (i.e. DWI charge)
- Failure to cooperate with the SCJC;
- Out of court behavior deemed inappropriate by the SCJC (i.e. sexual harassment, official oppression, bribery, theft, dwi, threats, racist remarks);
- Endorsement of political comments.

Not defined as Judicial Misconduct

- Any decision deemed incorrect is NOT judicial misconduct;
- Any decision pertaining to custody, visitation, or support;
- Any fine or sentence within established guidelines for the offense;

The Complaint

A complaint against a judicial officer can be filed by any person with knowledge of any action. A complaining party doesn’t need to be an attorney or hire an attorney. In some cases, the complaining party's identity may be kept confidential. However, a thorough investigation may make an issue of confidentiality.

The complaint must be submitted in writing, sworn, and on the official SCJC form. The Commission will not accept any faxed or electronic complaints.

The Complaint cont…

There are no formal limitations on the number of documents a complaining party may submit with the complaint. However, they do ask that parties maintain a twenty-five (25) page limit on all submissions. Complaining parties may even submit supplemental documentation within thirty (30) days of the original complaint.

The complaining party will be notified in writing once a complaint is received by the SCJC.

The Investigation

Once received, every complaint is evaluated and reviewed for appropriateness. It will then be presented to the Commission for consideration and vote. Complaining parties may be required to provide further detail or appear before the Commission. All Commission investigations are strictly confidential.

Your staff will be called and questioned.

Your Constables will be called and questioned.

The Investigation cont…

There are no rules regarding the time an investigation may take to complete.

In fact, the actual investigation may involve research, supplemental documentation, witnesses, interviews, and actual appearances by both parties.

SCJC Action

Following a complete investigation, all cases are presented to the Commission for consideration. In every case, the complaining party is notified in writing of any decision. In addition, unless a sanction is made public; the judicial officer's identity is not listed on any document referencing complaint.

SCJC Decisions

The Commission has a wide range of options to use in disposing of complaints. However, no action will be taken or initiated without a complete investigation. The available options include:

Administrative Dismissal: If a complaint fails to adequately identify an allegation of judicial misconduct, the Commission's Executive Director may administratively dismiss the complaint.

Dismissal: The Commission may dismiss any complaint it deems to contain insufficient evidence or fails to identify any sanctionable misconduct. However, all dismissals are subject to reconsideration.

SCJC Decisions Cont..

Order Additional Education: Improper judicial action may not always contain bad faith. In the case of misinformed decisions, the Commission may order, as a sanction, additional education for the judge. However, any such orders may also include private/public sanctions.

SCJC Decisions cont…

Sanctions are issued by the Commission only after a thorough investigation reveals actual judicial misconduct. However, the Commission does have the authority to determine the severity of the sanction.

Private Sanction: If the Commission deems circumstances appropriate, it will prepare the appropriate written order and serve the judicial officer with its decision. The Complaining party is also notified, but the actual order remains confidential. No further information regarding the order is provided to the public.

SCJC Decision Cont..

Public Sanction: If the Commission deems appropriate, a public reprimand is issued against the judicial officer. Under such circumstances, the actual written order is prepared and released to all interested parties, including the public. A public reprimand is issued when the Commission deems it appropriate to raise *public awareness*.

Suspension: A judicial officer may be suspended, with or without pay, from office if the Commission finds the officer was indicted for either a felony or charged with a misdemeanor involving their official misconduct. The judge is entitled to a hearing under these circumstances.

SCJC Decisions Cont..

The Commission may petition the Supreme Court of Texas to suspend a judicial officer if a *sworn complaint* is filed and the officer has *received notice* and been provided the *opportunity to respond* and/or appear to respond to the allegations pertaining to:

1. Willful or persistent violation of rules promulgated by the Supreme Court of Texas;
2. Incompetence in performing the duties of office;
3. Willful violation of the Code of Judicial Conduct; or
4. Willful and persistent conduct clearly inconsistent with the proper performance of duties; or
5. Any conduct that casts public discredit upon the judiciary.

SCJC Decisions Cont..

At this point, any order of suspension and all relevant records of proceedings relating to the matter will *remain subject to public disclosure*.

Voluntary Agreement to Resign: If a judicial officer decides, in lieu of disciplinary action, to voluntary resign, the agreement , if accepted, will be public and may be used in subsequent proceedings;

SCJC Decisions cont…

Formal Proceedings: Upon the Commissions vote, it may either conduct a trial or a request may be sent to the Texas Supreme Court for the appointment of a special master to conduct formal proceedings and report to the Commission. At this point, all proceedings are public information and subject to disclosure.

SCJC Decisions cont…

- Although the Commission cannot remove a judge from office, it can request additional evidence, dismiss the case, issue a public censure, or recommend removal of the officer. Only the Review Tribunal may order the removal of a judge from office. Thereafter, only the Texas Supreme Court retains appellate authority over any decision issued by the Review Tribunal.

What not to expect from the SCJC

The Commission cannot change or amend any ruling from a court. In addition, it cannot exercise any form of appellate review over any judge's decision. The Commission further lacks authority to release anyone from jail or award any form of damages or monetary relief. Finally, the Commission cannot provide legal advise or assist any litigant with their legal affairs.

Appellate Process

Within thirty (30) days of any decision by the Commission, a judge may appeal an order. The judge must file a written request for a Special Court of Review with the Chief Justice of the Texas Supreme Court. Once the Review Court of three are appointed, the Commission has fifteen (15) days to forward all pertinent documents to the Court.

Appellate Process cont…

Within thirty (30) days of receiving all necessary documents, the Review Court will hold a de novo trial. There are no jury panels, and all matters and issues are public venues. The panel's decision will be final, and it may take any necessary action or issue any sanction it deems appropriate.

Rule 12

Rule 12 of the Texas Rules of Judicial Administration protects from disclosure any document pertaining to a judicial agency's adjudicative function. Therefore, the Commission is not subject to the Texas Public Information Act, the Open Meetings Act, or the Texas Administrative Procedures Act.

However, certain constitutional provisions do provide for the mandatory disclosure of public sanctions, suspension orders, voluntary resignations, and formal charging documents.

Public Statements

The Commission is authorized by the Texas Constitution to issue public statements concerning the Commission or a judge when it determines that a statement may serve a public interest. For example:

PS-2013-1, 04/29/2013, "RE: Whether part-time magistrate judges in Bexar County may represent certain criminal defendants before the Bexar County Courts."

Ex parte Communications

Black's Law Dictionary defines an "*ex parte communication"* as a communication between a judge and "one party" in a legal matter when the opposing party is NOT present. The communication is unethical because its one-sided, its without notice to the other party, it lacks the opportunity to respond and makes reference to a judicial proceeding.

Texas Code of Judicial Conduct

Canon 6: Compliance with the Code of Judicial Conduct.

C(2):

“A Justice of the Peace…, shall not directly or indirectly initiate, permit, nor consider ex parte or other communications…”

Ex parte Communication

- Party wants to discuss a citation with the Judge
- Defendant was just served with a lawsuit and wants to discuss his options with the Judge;
- Plaintiff wants to discuss his landlord/tenant case with the Judge.

Receiving Your Complaint

- Take a deep breathe;
- Read the complaint;
- Gather your documents, notes, thoughts;
- Have a conversation with a colleague or legal counsel;
- Prepare a written response;
- File the written response on time.

Testimonial

Although confidential, I want to share my past experience with grievances. I've been before the State Bar of Texas and the Texas SCJC as an attorney and a justice. Neither experience was pleasant. Its nerve wrecking, tense, anxiety kicks in, depression starts knocking on the door, and fear creeps into your life. What made my ventures into the process even more disappointing was that they were both brought in bad faith and based on sour grapes. We aren't always going to please everyone. As an attorney, clients will not always be happy. As a justice, one party always loses. The only part of the process you can control is your own response. So make it count.

Parting thoughts…

The SCJC is a solid group of professional Texans. They are not the organization you want to try to muscle or outsmart. We are all elected officials and we tend to think we can control every aspect of our lives. But the reality is…WE CANT!! Some things are beyond our control. When you find yourself before the Commission, focus on the truth and take the time to defend yourself.

References:

I want to personally thank these two fine Texas Judges who took the time from their schedule to talk to me about the Commission and its role. I know I am a better Judge today because of their efforts.

- Judge Money, Justice of the Peace, Hunt, Texas.
- Judge T. Tijerina, Webb County Judge, Laredo, Texas