

Day to Day Ethics

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Agenda

-  Resources
-  Complaint Process
-  Conduct that Could Trigger Commission Action *(Including Applicability of Canons to Clerks)*

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Resources

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TJCTC
Officeholding
Deskbook

- Chapter 4
- <https://www.tjctc.org/tjctc-resources/Deskbooks.html>

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The Judicial Canons – www.txcourts.gov – “Rules & Forms”

The screenshot shows the Texas Judicial Branch website. The main navigation bar includes: Home, Courts, Rules & Forms, Organizations, Publications & Training, Programs & Services, Judicial Data, eFile Texas, and Media. A search bar is located below the navigation bar with the text 'Appellate Case #' and a 'FIND MY CASE' button. A secondary navigation bar below the search bar also includes: Home, Courts, Rules & Forms, Organizations, and Publicati. A large banner below the navigation bar reads 'Welcome to the Texas Judicial Branch'. Below the banner, there is a paragraph of text: 'sole authority for licensing attorneys in Texas and appoints the members of the Board of Law Examiners, which administers the Texas bar examination. Tex. Gov't Code §§ 82.00, 82.004. The Court promulgates the Texas Rules of Civil Procedure, the Texas Rules of Appellate Procedure, the Texas Rules of Evidence and other rules and standards.'

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Texas Rules of Judicial Administration **May 2, 2017**

Texas Code of Judicial Conduct **August 22, 2002**

Rules of Judicial Education **May 18, 2017**

Rule	Last Amended
Texas Rules of Civil Procedure <input type="checkbox"/>	January 1, 2018
Texas Rules of Appellate Procedure <input type="checkbox"/>	May 1, 2018
Texas Rules of Evidence <input type="checkbox"/>	January 1, 2018
Statewide Rules Governing Electronic Filing in Criminal Cases <input type="checkbox"/>	May 1, 2017
Texas Rules of Judicial Administration <input type="checkbox"/>	May 2, 2017
Texas Code of Judicial Conduct <input type="checkbox"/>	August 22, 2002
Rules of Judicial Education <input type="checkbox"/>	May 18, 2017
Judicial Branch Certification Commission Rules <input type="checkbox"/>	September 1, 2014
Texas Disciplinary Rules of Professional Conduct <input type="checkbox"/>	June 1, 2018
Texas Rules of Disciplinary Procedure <input type="checkbox"/>	June 1, 2018
Judicial Bypass Rules under Ch. 33 of the Family Code <input type="checkbox"/>	January 1, 2016

Local Rules

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Poll:

The next resource we are going to talk about is the State Commission on Judicial Conduct website.

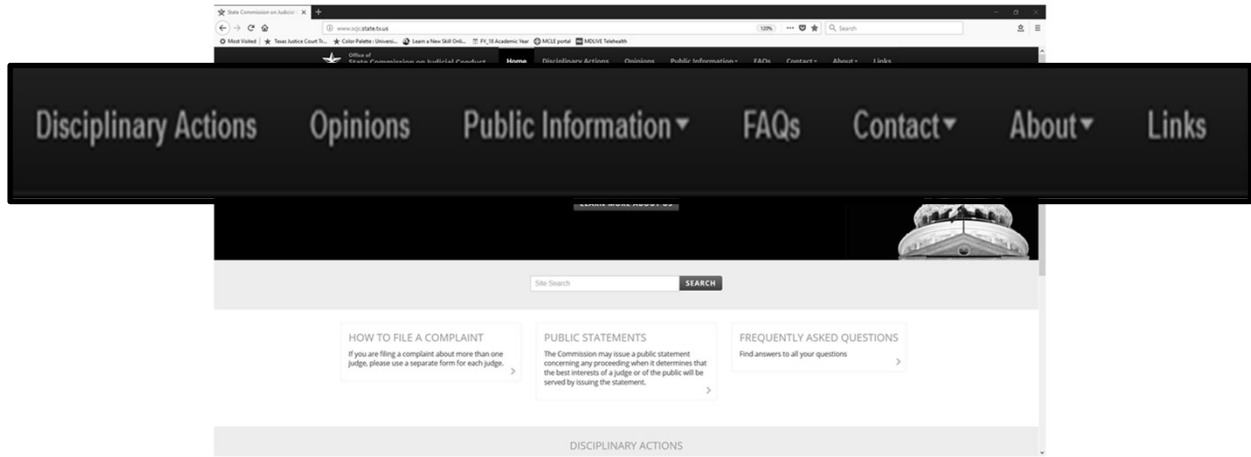
Have you ever looked at any of the information or resources on this website?

Yes

No

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State Commission on Judicial Conduct <http://www.scjc.state.tx.us/>



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Complaint 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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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 Texas Statutes, the Code of Judicial Conduct, or Rules of the Supreme Court.

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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; and may go through multiple steps. 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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Let's take a closer look at what happens during an investigation...

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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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Poll:

Have you (if you are a judge) ever been notified about a complaint that was then dismissed without you having to respond to the allegations?

(Note: Responses are anonymous)




Yes




No


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 <p>Full Investigation</p>	<ul style="list-style-type: none"> • This is where they ask the judge to respond. • 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. <ul style="list-style-type: none"> • For example: "What was your tone?"
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 <p>Full Investigation</p>	<ul style="list-style-type: none"> • 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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 <p>Full Investigation</p>	<ul style="list-style-type: none"> • Mere fact that the SCJC is sending a judge questions does not mean they have decided anything. • 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. <ul style="list-style-type: none"> • 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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 <p>Full Investigation</p>	<ul style="list-style-type: none"> • They also want to know if there was any guidance, mitigating circumstances, or a defense. <ul style="list-style-type: none"> • Example of guidance: The judge sought advice on the issue from the TJCTC or the SCJC. • Example of mitigation: Realized the conduct was wrong and have now been doing it correctly. • Example of a defense: The judge has an outside business, but he is not using his office to get business.
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Once the investigation is over, what are the options for the actions the Commission could take?

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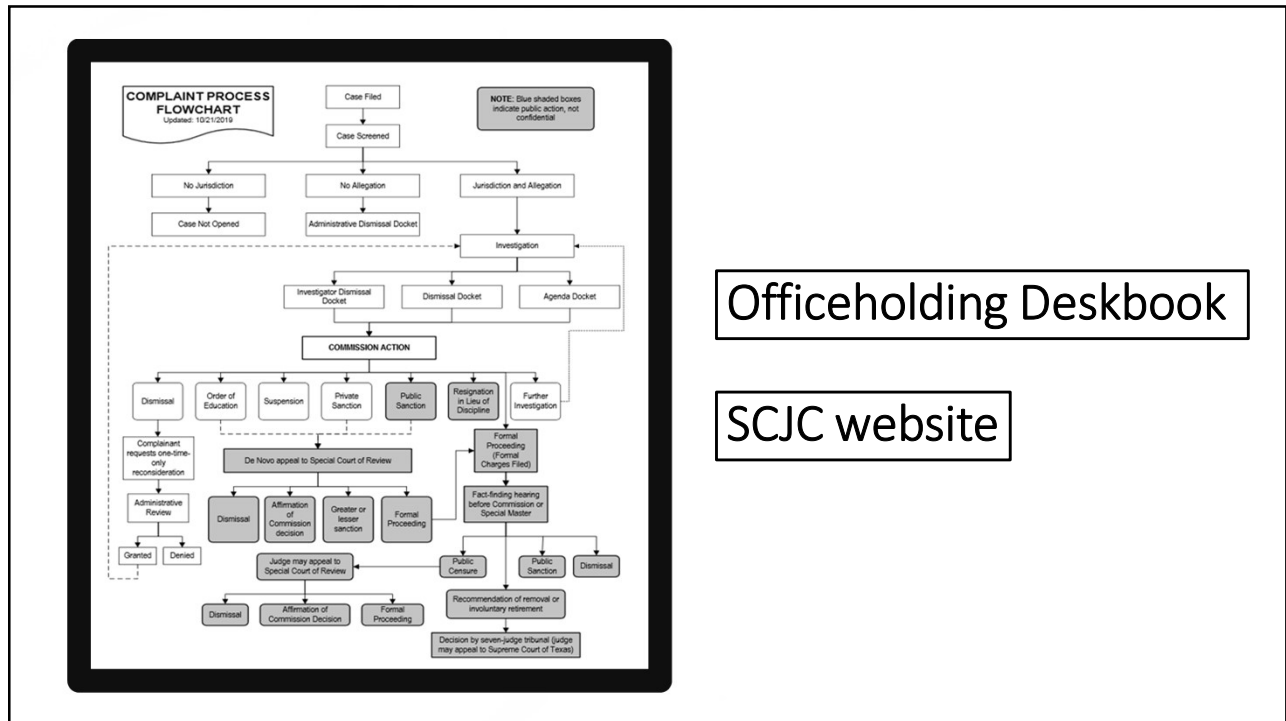
Actions the
Commission
May Take

- Administrative Dismissal
- Dismissal
- Order of Additional Education
- Private Sanction
 - Admonition, Warning, Reprimand
- Public Sanction
 - Admonition, Warning, Reprimand
- Suspension
- Recommendation of Suspension to the Supreme Court
- Voluntary Agreement to Resign
- Formal Proceedings

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Complaint Process Flowchart

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Officeholding Deskbook

SCJC website

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Tips for judges responding to a complaint.

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- DON'T post your new "status" on Facebook or other social media.
- Refresh your memory - write down everything you can recall about the matter.
- Talk to an attorney or another judge who you have confidence in – what do they think you should have done?
- Don't respond while upset – wait until you can do so calmly and without being emotional.
- Respond timely & truthfully and provide any documents requested.

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- Dispute allegations which are inaccurate or exaggerated.
- If you're confident you followed the law, explain fully.
- Explain any mitigating circumstances & provide any other relevant info.
- If you made a mistake, admit it and learn from it.
- Do not be your own worst enemy by not presenting any defense or response!


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Conduct that Could Trigger Commission Action

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- Remember, judicial misconduct is any action by a judge that brings discredit upon the judiciary or the administration of justice.
- Violation of the Texas Constitution, the Texas Statutes, the Code of Judicial Conduct, or Rules of the Supreme Court.

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There is no way to avoid having a complaint filed, but you can avoid having a **valid** complaint filed!

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Poll:

Have you read all of the Code of Judicial Conduct (the Canons) from beginning to end?



Yes



No

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Examples of Misconduct
(from SCJC FAQs)

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- Inappropriate or demeaning courtroom conduct, such as yelling, profanity, gender bias, or racial slurs.
- Using the prestige of judicial office to advance the private interests of the judge or others.
- Improper communication with only one of the parties or attorneys in a case.
- Public comment regarding a pending case.
- Hearing a case in which the judge has a financial interest in the outcome.

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- Ruling in a case in which the parties or attorneys are related to the judge within a prohibited degree of kinship.
- Alcohol, drug, or mental health problems.
- A judge's failure to cooperate with the Commission or failure to abide by any provision of a Voluntary Agreement to Resign in Lieu of Disciplinary Action.
- Out-of-court behavior such as sexual harassment, official oppression, bribery, theft, driving while intoxicated, making threats, or making racist comments.
- Endorsement of a specific political candidate.

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Specific Actions that Have Recently Resulted in Commission Action

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- Not following basic procedures (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).
- Incompetence or ignorance of the law (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).
- Sexual harassment and inappropriate sexual conduct including sexting (involving the judge's employees, other county employees/officials, and others).
- Expressing racist or sexist remarks, including on social media (such as Facebook) even if not identifying oneself as a judge.

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- Expressing disdain for members of a particular political or other group (including on social media).
- Endorsement of a candidate for office (including on social media).
- Publicly commenting (including on social media) about a pending case or cases in other courts.
- Hearing cases where the judge should have recused (a case filed by a family member).
- Insulting attorneys and parties during hearings.
- Getting into an altercation with a member of the public.

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Poll:
Is social media
your friend?

 Yes

 No

 Only if I'm VERY careful

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Applicability of Canons to Clerks

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Do Clerks Have to Follow the Canons?

- A judge must require clerks subject to their direction and control to follow certain canons (*see following slides*).
- If a clerk violates a canon, the judge could face commission action if it is determined that they did not require the proper conduct.
- Definition of "Require"
 - The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

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Canons
(3)(B)(4) &
(3)(B)(6)

A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and **should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.**

A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and **shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.**

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Canon 3(B)(8)

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. [With some exceptions], a judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. **A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.**

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Canon
(3)(B)(10)

A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. **A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control.**

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Canons
(3)(C)(1)-(2)

A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

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Scenarios

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If a party is being rude and yelling, it is OK for the judge to yell back at them.

TRUE

FALSE

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Alright, but then you could just have the clerk yell back at them instead.

TRUE

FALSE

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A party has a case pending before the court. They are posting on Facebook about their case, speaking poorly about the court, and tagging the judge and clerks. What do you do?

Ignore	Ignore the posts.
Respond	Respond to the posts to defend the court's actions.
Read	Read the posts, but do not respond.

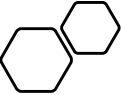
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A friend posts on Facebook that everyone should vote for a particular candidate in a local election. You agree with them.

What do you do?

Like	Like the post.
Comment	Comment on the post that you'll be voting for that person.
Ignore	Ignore the post.

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 You hate ODL cases. What are your options?

Tell applicants that your court doesn't do ODL cases and direct them to another court that does.	Accept any ODL applications and just suffer through them.	Accept any ODL applications and learn to love them.
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A judge receives an inquiry from the commission, asking for a response. The complaint was made by a party who didn't like the outcome of their case and the judge knows that everything in it is completely made up and that no reasonable person could believe it.

What should they do?

Ask	Ask the commission why they are wasting their time with this nonsense.
Respond	Respond to the commission, give them the requested info, and explain what really happened.
Ignore	Ignore the inquiry because they know that there is no way the commission will believe the complaint and they are really busy.