MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE

2018 ANNUAL REPORT

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COMMISSION MEMBERS

JUDGE KENT MCDANIEL, CHAIRMAN
CORNELIA GAYDEN, VICE-CHAIRMAN
JUDGE VICKI R. BARNES
JUDGE JAMES L. ROBERTS, JR.
JUDGE JIMMY MORTON
JEFFERY M. ADCOCK
ROY CAMPBELL, III, ESQ.

ALTERNATE COMMISSION MEMBERS

JUDGE JOHN H. EMFINGER
JUDGE CYNTHIA BREWER
JUDGE RICHELLE LUMPKIN
JUDGE EDWIN WOODS, JR.
COL. (RET.) SILVANUS JOHNSON
ROBERT GRAVES
KAREN K. SAWYER, ESQ.

EXECUTIVE DIRECTOR

DARLENE D. BALLARD

COMMISSION OFFICES

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COMMISSIONER BIOGRAPHIES

JUDGE KENT MCDANIEL, Chairman

From 1989 to 1995, Judge McDaniel served as First Assistant United States Attorney for the Southern District of Mississippi, prosecuting white-collar crimes and drug cases. He returned to the private practice of law in 1995, forming his own law firm. He was first appointed to a judicial position in November, 1995 when he became Municipal Judge in Flowood, Mississippi. In September, 1997, Judge McDaniel was appointed as Rankin County Court Judge by then governor, Kirk Fordice. He has since been elected to five full terms. Judge McDaniel served with the 20th Special Forces Group (MSANG) from 1968-1973 and with the 112th MP Battalion (MSANG) from 1973-1978 leaving the service with the rank of First Lieutenant. He served as an adjunct faculty member at the Mississippi College School of Law for 25 years teaching trial practice. In 2013, the earned a Doctor of Laws degree from Mississippi College School of Law. Judge McDaniel is the County Court member for the Commission.

CORNELIA GAYDEN, Vice-Chairman

Ms. Gayden is the Vice Chairman and lay member. She is employed by the McComb School District as a Community Engagement and Communications Coordinator. Ms. Gayden is a graduate of Louisiana State University where she played basketball. After graduation, she played professional basketball in the United States, Europe and the Middle East. Ms. Gayden also played in the USA Basketball Select Team World University Games in Fuoka, Japan in 1995. She is a three time recipient of the Madeline Doucet Alumni Award awarded to the outstanding alumni of the year. She was also named Southeastern Conference Great in 2003, Women's Basketball News Service All American in 2000, Kodak Regional All American in 1994. She is the 3rd all time leading scorer in the Southeastern Conference and the NCAA all time leader in 3 point goals (337). Ms. Gayden is very active in her community serving on the advisory board for the McComb School District, the mayor's Youth Council Committee, and fundraiser committee chair for the Pine Grove Community Center. Ms. Gayden founded the Rainin' Three Leadership Academy and Rainin' Three Hoop School. She has also been a member of the Kiwanis Club, the Pike County Arts Council, the Southwest Medical Foundation, and the Pike County Chamber of Commerce.

JUDGE VICKI R. BARNES

Judge Barnes earned her Juris Doctorate from the University of Mississippi School of Law. After law school, she was a solo practitioner and also served as the Municipal Court Judge for the City of Vicksburg. In 1994 Judge Barnes was elected as a Chancery Court Judge and has been re-elected each subsequent term. She is the recipient of the Judge Constance Baker Motley award. She is a fellow

of the Mississippi Bar Foundation and a former Trustee of the Mississippi Bar Foundation. She is a member of the Mississippi Conference of Judges, Magnolia Bar Foundation, Mississippi Bar Association, American Bar Association and the NAACP. Judge Barnes currently serves on the YMCA Board of Directors and is a former president of that organization. She is the Senior Chancellor for the 9th Chancery Court District. Judge Barnes serves as the Chancery Court member for the Commission.

JUDGE JAMES L. ROBERTS, JR.

Judge James L. Roberts, Jr. earned his Juris Doctorate in 1971 from the University of Mississippi School of Law. He was in private practice from 1971 to 1984 and during this time also served as Pontotoc County Prosecuting Attorney. From 1984 to 1988 Judge Roberts served as Mississippi Commissioner of Public Safety under the administration of Governor Bill Allain. In January, 1988, he was appointed to the Chancery Court bench where he served until 1992, when he took the oath of office as a Justice of the Mississippi Supreme Court. Judge Roberts voluntarily relinquished his seat on the Supreme Court in 1999 to pursue other opportunities. Judge Roberts taught at the University of Southern Mississippi and engaged in arbitration and mediation practice. He was chairman of the Governor's Commission on Juvenile Justice, a member of the Board of Governors of the Mississippi Judicial College and the Mississippi Bar Foundation. In 2012, Judge Roberts received the Lifetime Achievement Award from the Mississippi Bar Association and was the 2014 recipient of the Distinguished Jurist Award at Mississippi State University. He is currently serving as Circuit Court Judge in the 1st Circuit Court District. Judge Roberts is the Circuit Court Judge member for the Commission.

JUDGE JIMMY MORTON

Judge Morton currently serves the Commission as the Justice Court member. He was first elected Justice Court Judge in 2008 for Hinds County, Mississippi, District 4. He also is the Municipal Court Judge for the city of Raymond, Mississippi and the Municipal Judge Pro Tempore for Byram, Mississippi. Judge Morton is a graduate of Hinds Community College and Mississippi State University. Prior to holding judicial office, he was the owner/operator of a popular eatery while serving as a deputy with the Hinds County Sheriff Department. Judge Morton is currently a Mississippi Licensed Auctioneer and Personal Property Appraiser, a member of the Mississippi Cattlemen's Association and a member of Grace Bible Church on the Parkway, Ridgeland, Mississippi.

ROY CAMPBELL

Roy D. Campbell, III, is a partner in the Jackson office of Bradley Arant Boult Cummings LLP, a firm of 500 lawyers in the Southeast. He focuses his practice

on commercial litigation and product liability. Roy was born and grew up in Greenville, Mississippi, graduated from Greenville High School in 1968, from Davidson College in 1972, and from The University of Mississippi School of Law in 1975. He is a Fellow of the American College of Trial Lawyers and a member of the American Board of Trial Advocates. Since 2005 he has been listed in *Chambers USA and The Best Lawyers in America*. He is a past president of The Mississippi Bar, past president of the Capital Area Bar Association and past president of the Board of Trustees of the Mississippi Museum of Art. He is a recipient of The Mississippi Bar's Distinguished Service Award and the Capital Area Bar Association's Outstanding Service Award. Mr. Campbell serves the Commission as the attorney member.

JEFF ADCOCK

Jeffery Adcock is a native of Biloxi, Mississippi and graduated from Mississippi State University with a Bachelors of Science Degree in Business Administration. After earning a Masters of Business Administration, he moved to Jackson, Mississippi. After a career in state government that included a variety of positions and responsibilities in several different agencies, he became the Director of Administration for the State Auditor's Office. After serving in this position under four different State Auditors, Mr. Adcock retired from state government in 2009. After retirement from state government, Mr. Adcock has been involved in real estate management and investment. Mr. Adcock serves the Commission as a lay member.

ALTERNATE COMMISSIONER BIOGRAPHIES

JUDGE JOHN H. EMFINGER

Judge Emfinger obtained his Juris Doctorate from Mississippi College School of Law in 1980 and earned his M.B.A in 1981. Prior to his judicial election in 2010, Judge Emfinger served for 14 years as an assistant district attorney in the 20th Circuit Court District. For almost 10 years he worked as a special assistant attorney general for the State of Mississippi. In addition, Judge Emfinger was in private practice for seven years. He was first elected as a Circuit Judge for the 20th Judicial District of Mississippi in 2010 and has since been re-elected. Judge Emfinger is the Vice Chair of the Mississippi Conference of Circuit Judges and serves on the Committee on Uniform Criminal Code. He serves as the alternate Circuit Judge member on the Commission.

JUDGE CYNTHIA L. BREWER

Judge Brewer obtained her Juris Doctorate from Mississippi College School of Law in 1985. She was in private practice for several years. During that time she served as Municipal Court Prosecutor for the City of Jackson, Mississippi and County Prosecutor for Hinds County, Mississippi, as well as serving as an adjunct professor at the Mississippi College School of Law. Judge Brewer was first elected as County Court Judge in Madison County, Mississippi in 2002. She was later elected as judge in the Chancery Court of Madison County, Mississippi in 2006 and was re-elected to that position in 2010 and 2014. Judge Brewer is in the Judicial Studies Masters Program through the University of Nevada at Reno, National Judicial College where she also serves as an instructor. Judge Brewer serves the Commission as the alternate Chancery Court member.

JUDGE RICHELLE LUMPKIN

Judge Lumpkin obtained her Juris Doctorate from Mississippi College School of Law in 1990. She was in private practice for 20 years focusing her practice in the areas of criminal defense, family law, personal injury, real estate and general litigation. During this time she also served as Youth Court Referee and Municipal Court Judge. In November of 2010 she was elected as the first County Court Judge of Pearl River County. She was subsequently re-elected in 2014. Judge Lumpkin is a member of the Mississippi Bar Association, the Pearl River Bar Association and a past member of the Mississippi Board of Bar Commissioners. Judge Lumpkin serves as the alternate County Court member for the Commission.

JUDGE EDWIN WOODS, JR.

Judge Woods is a native of and currently resides in Vicksburg, Mississippi. He is the managing partner of Bond, Botes and Woods, P.C. in Jackson, Mississippi. He received his Doctor of Jurisprudence degree from the Mississippi College School of Law in Jackson, Mississippi and was admitted to the Mississippi Bar in 1991. Ed currently concentrates his law practice in representing consumers in financial crisis before the United States Bankruptcy Court. He also represents clients in consumer rights and debt collection abuse cases. Since 2004, Ed has served as a Justice Court Judge elected from the Northern District of Warren County. He periodically serves as a lecturer at continuing judicial education seminars for justice court judges statewide and has served as a member of the Mississippi Code of Judicial Conduct Study Committee. He is a former President of the Warren County Bar Association and is a past Secretary/Treasurer of that organization. Judge Woods currently serves the Commission as the alternate Justice Court Judge.

KAREN K. SAWYER

Ms. Sawyer is an honor graduate from the University of Texas with a Baccalaureate Degree in Nursing. She received her Juris Doctorate cum laude from Tulane Law School in 1992. She is a shareholder at Copeland, Cook, Taylor and Bush, P.A. (Gulf Coast Office) where her practice is primarily civil litigation with a focus on medical malpractice, general liability and insurance coverage matters. She is also a certified mediator. Ms. Sawyer is a member of the Harrison County Bar, the Mississippi Bar and the American Bar Association. She volunteers as a facilitator in the annual James O. Dukes Professionalism Task Force Program. Ms. Sawyer served as past chair of the Women in the Profession Committee and is a member of the Mississippi Women's Lawyer's Association. Currently she serves on the Bench Bar Committee and is a Bar Commissioner for the Second Judicial District, Post 1. Ms. Sawyer was admitted as a Fellow of the Mississippi Bar Foundation in 2003 where she served as Trustee and President. She is also a member of the Russell-Blass-Walker Chapter of the American Inns of Court. She has twice been appointed to serve on a Merit Selection Panel which submits recommendations for the position of United States Magistrate Judge for the Southern District of Mississippi. Ms. Sawyer has received the Alonzo Westbrook Public Service Award in 2008, was named one of the Women Trailblazers by the Women in the Profession Committee in 2012 and received the Mississippi Bar's Distinguished Service Award for 2012-2013. In July, 2015, she was named the Susie Blue Buchanan Award winner by the Women in the Profession. In addition, she serves on the Board of Directors of the South Mississippi Aids Task Force, the League of Women Voters, Mississippi Medical

Alliance, and the Great Southern Club. She is currently serving on the Commission as the alternate attorney member.

COL. (R) SILVANUS JOHNSON

Colonel Silvanus Johnson is a retired Medical Services Officer, Special Education and Biology learning strategy teacher at Mendenhall High School, Mendenhall, Mississippi. He earned the Mississippi Meritorious Service Award and was named teacher of the year for the 2013-2014 school year. He is a graduate of Jackson State University and was the Senior Assistant Professor of the Military Science Department there. Col. Johnson was the first African American, enlisted soldier, to enter the Mississippi Army National Guard. In addition, he is the first and only African American member of the Board of Directors for the Mississippi Military Museum at Camp Shelby, being appointed to that post by Mississippi's first African American Adjutant General, Gen. Augustus Leon Collins. Col. Johnson is a life member of the Phi Beta Sigma Fraternity, Inc. being selected as the Brother of the Year, obtaining the Outstanding Achievement Award, and many more honorable awards. He is married and the father of two adult daughters and serves as a deacon and treasurer for the Sylvarena Missionary Baptist Church. He currently serves the Commission as an alternate lay member.

ROBERT (BOB) GRAVES

Bob graduated from Winona High School, Mississippi State University, and Mississippi College School of Law. He was a Senior Vice President with Merrill Lynch in the Jackson office and retired in 2002. He currently serves as an Arbitrator of Disputes for the Financial Industry Regulatory Authority (FINRA). In addition, Bob raises Angus cattle on his farm in Carroll County. As a Rotarian he is recognized as a multiple Paul Harris Fellow, a Paul Harris Society Member, a Major Donor, and a Rotary Foundation Benefactor. He is a member of the Winona Rotary Club. He served as District Governor in 2011-12. He is a veteran and has been a member of American Legion Post 52 since 1969. He is a member of the Post Oratorical Committee and the Boys State Committee. He serves as an alternate member of the Mississippi Commission on Judicial Performance. Bob is married to the former Carole Watts. They are members of the First Baptist Church of Winona.

OUR MISSION

The Mississippi Commission on Judicial Performance was created in 1979 by the Mississippi Legislature and the voters of the State of Mississippi by constitutional amendment. The Commission enforces standards of judicial conduct, inquires into judicial disability and conduct, protects the public from judicial misconduct and disabled judges, and protects the judiciary from unfounded allegations. Our purpose is to be rehabilitative and educational as well as disciplinary.

The Commission oversees the conduct of the Mississippi Supreme Court, the Court of Appeals, Circuit Judges, Chancery Judges, County Court Judges, Municipal Court Judges, Justice Court Judges and any other officer of any judicial system who performs judicial functions.

TYPES OF COMPLAINTS THE COMMISSION MAY CONSIDER

1. MISCONDUCT

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It governs the activities of judges both on and off the bench. It consists of Canons which contain sections. These Canons and sections are considered authoritative and rules of reason. The text of the Canons and sections govern the conduct of judges; however, not every instance of non-compliance results in disciplinary action. Judicial misconduct can be divided into several categories.

(A) Improper Courtroom Behavior

Allegations of improper courtroom behavior may include: demeanor; improper treatment of attorneys, parties, witnesses and others involved in the court process; improper physical conduct; or persistent failure to dispose of court business promptly and responsibly. Examples may include: racist or sexist comments, sleeping on the bench, inattentiveness, or substance abuse. Judges may also be disciplined for administrative missteps such as taking cases under advisement without ruling in a timely manner.

(B) Improper or Illegal Influence

Judges should not be swayed by any factor outside of the evidence presented in a trial or hearing that would affect their ability to be fair and impartial. Canon 2B

prohibits a judge from letting family, social or political relationships influence their rulings. Canon 3E also prohibits a judge from hearing matters in which he or a family member has an interest in the outcome of a case. Examples of improper influence would include, but not be limited to, the receipt of gifts, bribes, loans or favors. Also included in this category would be *ex parte* communications that are prohibited under Canon 3B(7). This occurs when a judge talks to one party without the other party being present or aware of the communication.

(C) Improper Conduct Away from the Bench

The Commentary to Canon 2A reinforces the authority of the Commission to inquire into issues that may occur in the professional and/or personal lives of judges. This can include a wide variety of offenses. Examples may include criminal activity, improper speech or associations, lewdness, or any other activity that would tend to erode public confidence in the integrity of the judicial office.

(D) Other Offenses

This category could include a wide range of offenses. Some common complaints are: interference with the attorney/client relationship, bias or prejudice, improper campaign activity, making public comments regarding a pending or impending case, disqualification issues or lending the prestige of his office to advance the private interests of others.

2. PHYSICAL OR MENTAL DISABILITY

The Commission also is tasked with reviewing allegations that a judge has become disabled due to physical or mental disabilities, (i.e. alcohol or substance

abuse, debilitating physical illness, mental illness or dementia.) The Commission has the authority to have the judge submit to an examination by licensed physician(s) chosen by the Commission.

3. COMPLAINTS OUTSIDE OF THE COMMISSION'S SCOPE

The Commission frequently receives complaints from litigants who are unhappy with a judge's ruling. The Commission has no authority to settle questions of law or to reverse judicial decisions. That role is strictly within the purview of the appellate courts. In addition, the Commission does not determine whether or not a judge should recuse in a case. That is also up to the appellate courts. Finally, the Commission does not have the authority to entertain complaints against federal judges.

THE COMPLAINT PROCESS

The Complaint

- All Complaints Must Be Written.
- Complaint Forms are provided by the Commission via mail, fax, or email.
- The Complaint Form can also be found on the Commission's website, www.judicialperformance.ms.gov

The Initial Review

- A staff member reviews the complaint form, and determines that the allegations are against a sitting state court judge.
- A case number is assigned to the complaint.
- A letter is sent to the complainant. The letter provides the complainant with the case number, and the date the Commission will review the complaint.
- Before the Commission meeting, the complaints are mailed to the Commission members for their review.

The Commission Meeting

- Complaints will be dismissed for the following reasons: the Commission lacks jurisdiction, the conduct relates to claims of errors in law or fact and are matters for appellate review, or the alleged conduct is unfounded and dismissed for lack of evidence.
- The Complaints will not be dismissed if the Commission determines there is a possibility of misconduct, at which time an investigation is ordered.

The Investigation

- Witnesses are interviewed, documents are requested and reviewed, and an investigative file is complied.
- The Investigator reports the fruits of the investigation at the next Commission meeting.

The Commission Meeting

- After being briefed by the Commission Staff, the Commission reviews the complaint for a second time.
- The Commission must decide at this stage either to find no misconduct or to find that there is probable cause to file a Formal Complaint.

The Formal Complaint

- The Commission has found probable cause to file a Formal Complaint.
- The Commission serves the judge with the Formal Complaint.
- The Formal Complaint must contain the identity of the complainant, the specific charges against the judge, and must inform inform the judge that he or she has a right to file an answer.

SUMMARY OF COMPLAINTS REVIEWED BY THE COMMISSION

In calendar year 2018, the Commission received 264 new complaints against Mississippi judges. Due to budget constraints, the Commission is only able meet every other month. Therefore, only 235 of the 264 new complaints were considered by the Commission during the 2018 calendar year. Of that 235, 54 complaints required an investigation, and in 9 cases formal proceedings were initiated. The remaining 29 pending new complaints received in 2018 will be considered during the 2019 calendar year.

In addition, several hundred telephone calls and inquiries were fielded by the staff concerning the judicial system, interpretation of the Code of Judicial Conduct, how to file a complaint and the status of complaints filed.

The Commission employs a staff of five including:

Executive Director-Darlene Ballard

Senior Staff Atty. - Rachel Michel

Staff Atty. - Meagan Brittain

Investigator - Danny Perry

Office Manager - Meranda Cavett

SOURCE OF THE COMPLAINTS

	Prior Years-Cumulative	2018
Attorneys	352	7
Citizen	999	13
Commission	161	5
Judge	44	1
Law Enforcement	207	0
Litigant	7483	214
Public Official	140	1
Other	83	23
TOTALS	**9469**	**264**

TYPES OF JUDGES RECEIVING COMPLAINTS

	Prior Years-Cumulative	2018
Administrative	31	1
Court of Appeals	46	0
Chancery Court	1761	47
Circuit Court	1978	64
County Court	485	18
Family Master	28	2
Justice Court	3762	94
Municipal Court	949	27
Senior/Special Judge	53	3
Supreme Court	223	6
Youth Court	105	2
Other	48	0
TOTALS	**9469**	**264**

DISPOSITION OF COMPLAINTS

	Prior Years-Cumulative	2018
Dismissed:		
Appellate Review	3429	81
Lack of Evidence	4626	119
Lack of Jurisdiction	84	1
Formal Complaint Pending	545	2
Informal Commission Action	606	16
[Removed, Resigned, Retired or Died]	82	1
Inactive Status	36	0
Pending at Supreme Court	2	3
Pending Investigation	0	11
Private Admonishment	59	1
Pending New Complaints	0	29
TOTALS	**9469**	**264**

DISCIPLINARY RECOMMENDATIONS

In 2018, the Commission received 264 complaints and dismissed 201 at the initial stage as shown above. In addition to disciplinary action, the Commission is charged with educating and rehabilitating judges and in accordance with that mission issued 16 cautionary/instructional letters and spoke at conferences regarding judicial ethics. The Commission has 11 cases currently pending before the Commission that are still under investigation. There are also 29 new complaints yet to be considered by the Commission.

Also during 2018, the Commission filed three (3) recommendations for discipline with the Mississippi Supreme Court. The Court issued a ruling in one (1) and two others are pending. These cases are matters of public record and are reported here without violating the constitutional requirement of confidentiality.

MISSISSIPPI SUPREME COURT MATTERS

DECISION RENDERED BY THE SUPREME COURT DURING THE 2018 CALENDAR YEAR

Miss. Comm'n on Judicial Performance v. Curry, 2018-JP-00194-SCT (1/31/18)

The Commission recommended that a Justice Court judge be publicly reprimanded. The Supreme Court found that the Respondent signed warrants based on affidavits sworn by her relatives, dismissing domestic abuse petitions without proper hearing, presiding over cases involving a relative, waiving an expungement fee and ordering clerk to void receipts, and retaliation against complaining party. The judge agreed to the facts and the proposed sanction.

RECOMMENDATIONS PENDING BEFORE THE SUPREME COURT FROM THE 2018 CALENDAR YEAR

Miss. Comm'n on Judicial Performance v. Burton, 2018-JP-01537-SCT (2018)

The Commission alleges and the Respondent agrees that he initiated a criminal complaint in the justice court jurisdiction where he also presides. After his colleague, Judge Rogers, signed an arrest warrant for Regina Burt, Respondent ordered a deputy clerk to rescind the warrant. By following Respondent's instructions, the deputy clerk effectively expunged Ms. Burt's record. By inserting himself into a case, in which he was the affiant, Respondent violated Canons 1, 2A, 2B, 3B(1), 3B(2) and 3E(1). By ordering the deputy clerk to rescind the arrest warrant, Respondent violated Canon 2B. The Commission recommended that the judge be publicly reprimanded and fined $500.00 for his conduct.

Miss. Comm'n on Judicial Performance v. McGee, 2018-JP-01578-SCT (2018)

The Commission alleges and the Respondent agrees that he established a pattern of taking cases under advisement and then not issuing rulings in those cases. The Commission found 28 instances. In addition, Respondent set aside default judgments without proper motion and granted a judgment without holding a hearing on the merits. It is alleged that the Respondent violated Canons 1, 2A, 3A, 3B(l), 3B(2), 3B(8), and 3C(1) of the Code of Judicial Conduct of Mississippi. The Commission recommended that the Respondent be publicly reprimanded and fined $1,683.34, the equivalent of 2 weeks of salary.