



UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2017

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Creation and Authority of the Judicial Conduct Commission

Although it existed previously as a legislatively created body, Utah's Judicial Conduct Commission (JCC) was constitutionally established in 1984. Constitution of Utah, Article VIII, Section 13. The constitution authorizes the Legislature to statutorily establish the composition and procedures of the JCC. Those provisions are found in Utah Code Ann., Title 78A, Chapter 11.

The JCC is empowered to investigate and conduct confidential hearings regarding complaints against state, county and municipal judges throughout the state. The JCC may recommend the reprimand, censure, suspension, removal, or involuntary retirement of a judge for any of the following reasons:

- action which constitutes willful misconduct in office;
- final conviction of a crime punishable as a felony under state or federal law;
- willful and persistent failure to perform judicial duties;
- disability that seriously interferes with the performance of judicial duties; or
- conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Prior to the implementation of any such JCC recommendation, the Utah Supreme Court reviews the JCC's proceedings as to both law and fact. The Supreme Court then issues an order implementing, rejecting, or modifying the JCC's recommendation.

Number of Complaints Received in FY 2017

Of the 72 complaints received in FY 2017, 45 have been resolved and 27 are pending.

Complaints Received in FY 2017			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	0	0
Court of Appeals	7	3	3
District	72	48	49
Juvenile	31	5	5
Justice Court	98	16	16
Pro Tempore	67		
Active Senior	38	0	0
Total	318	72	73

Confidentiality of JCC Records and Proceedings

Except in certain limited circumstances specified by statute, all complaints, papers and testimony received or maintained by the JCC, and the record of any confidential hearings conducted by the JCC, are confidential, and cannot be disclosed.

Sanctions and Other Resolutions

Sanctions Implemented by the Utah Supreme Court

Reprimand. On November 4, 2016, the Utah Supreme Court reprimanded Third District Justice Court Judge Michael R. Kwan. Over the last ten years Judge Kwan was elected to various officer positions of the OCA-Asian Pacific American Advocates, a national nonprofit organization. During his most recent term as president, the organization issued articles and press releases that included comments from or attributed to Judge Kwan, issued articles or press releases criticizing candidates for political office, and Judge Kwan appeared at an organizational fundraising event. The judge's actions violated Code of Judicial Conduct Rules 1.2, 2.10, 3.1, 3.2, 3.7 and Canon 4.

Dismissals with Warnings Issued by the Judicial Conduct Commission

Dismissal with a Warning. On August 16, 2016, the JCC dismissed a self-reported complaint by a part-time justice court judge who had represented a juvenile in a criminal court case in violation of Utah Code Ann. § 78A-7-206(2). The JCC found that the judge's actions violated Rule 1.1, which requires judges to comply with the law. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On March 21, 2017, the JCC dismissed a complaint filed against a district court judge who made two offensive statements about an excused juror during sidebar discussions with the prosecutor and defense counsel. The JCC found that the judge's actions violated Rules 2.3(B) and 2.8 (B) of the Code of Judicial Conduct regarding Bias and Decorum. The JCC also found the comments violated Utah Standards of Judicial Professionalism and Civility Rule 11-302(2) which provides that judges will not use language that is vulgar or profane. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On March 21, 2017, the JCC dismissed a complaint filed against a justice court judge who had revoked the appointment of counsel for an indigent criminal defendant when the defendant failed to appear. The JCC found the judge's actions violated Rule 1.1, which requires judges to comply with the law affording the right to counsel if indigent until the court determines that the defendant's financial circumstance have changed. The appointment of counsel is based on indigence and cannot be conditioned on a defendant's failure to appear without just cause or used as a sanction. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On May 16, 2017, the JCC dismissed a complaint filed against a juvenile court judge who had failed to ensure notice and an adequate record of permitted ex-parte communications. The JCC found that the judge's actions violated Rule 2.9(A)(1)(b), which is an exception to the prohibition on ex-parte communications requiring notice and an adequate record is maintained. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Meetings

The JCC meets as needed on the third Tuesday of each month at the offices of the JCC. The JCC met nine (9) times during FY 2017.

Administrative Rules

The JCC's administrative rules are available on-line at www.rules.utah.gov.

FY17 JCC Commissioners

Neal Cox
Tami King
Mark Raymond
Terry Welch
James Jardine
Rep. Brian King, Chair
Rep. Craig Hall
Sen. Karen Mayne
Sen. Lyle Hillyard
Hon. Stephen Roth
Hon. Todd Shaughnessy

Website

The JCC's website, www.jcc.utah.gov, contains in-depth information, links to related sites, annual reports, copies of public discipline documents, and downloadable complaint forms.

JCC Statutes

The statutes governing the JCC are located in Utah Code Ann., Title 78A, Chapter 11.

Budget

Most of the JCC's budget is appropriated annually by the Legislature. For FY 2017, the legislative appropriation was \$256,700. The JCC had non-lapsing savings from FY 2016 in the amount of \$23,876 resulting in total available funds in the amount of \$280,576. JCC expenses for FY 2017 were \$224,999, leaving a balance of \$55,576.

JCC Staff

Alex G. Peterson, Executive Director
Aimee Thoman, Investigative Counsel
Sara Sherman, Office Technician

UTAH JUDICIAL CONDUCT COMMISSION – COMPLAINT RESOLUTION PROCESS

INITIAL SCREENING	PRELIMINARY INVESTIGATION	FULL INVESTIGATION	FORMAL PROCEEDINGS	SUPREME COURT
<p>Executive Director reviews each "complaint" to determine whether it is a complaint within the JCC's jurisdiction.</p> <p>Staff returns non-JCC complaints (i.e., complaints against bar members or court employees) to complainant with appropriate instructions.</p> <p>For JCC complaints, staff prepares electronic and hard-copy files, sends acknowledgment letter to complainant, and returns hard-copy file to Executive Director.</p> <p>Executive Director assigns investigator.</p> <p><i>Note: Anonymous complaints are submitted directly to JCC members, who review and discuss the complaint and vote to either take no action or to have staff conduct a preliminary investigation.</i></p>	<p>Investigator conducts preliminary investigation, writes preliminary investigation report, and recommends whether to dismiss or to proceed to full investigation as to some or all allegations.</p> <p>Executive Director reviews preliminary investigation report and recommendation, and may revise either.</p> <p>Staff distributes preliminary investigation report and recommendation, along with pertinent materials, to JCC members.</p> <p>JCC meets, reviews and discusses preliminary investigation report and recommendation, and votes to dismiss, to have staff conduct additional preliminary investigation, or to proceed to full investigation as to some or all allegations.</p>	<p>Staff provides judge with copy of complaint and other pertinent materials and asks judge to respond in writing to identified allegations.</p> <p>Investigator conducts additional investigation, if necessary, as to issues raised in judge's response. Investigator may write supplemental investigation report and may make recommendation whether to dismiss or to proceed to formal proceedings.</p> <p>Staff distributes judge's response and any supplemental investigation report and recommendation, along with pertinent materials, to JCC members.</p> <p>JCC meets, reviews and discusses judge's response and any supplemental investigation report and recommendation, and votes to dismiss, to have staff conduct additional investigation, or to proceed to formal proceedings as to some or all allegations.</p>	<p>Staff prepares formal complaint and serves same upon judge via certified mail.</p> <p>Judge may file written response.</p> <p>Matter may be resolved by dismissal, stipulated resolution or confidential hearing.</p> <p>A stipulated resolution may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement</p> <p>After a confidential hearing, the JCC may dismiss the matter or may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement</p>	<p>Staff files JCC's findings of fact, recommendation and other statutorily required materials with Supreme Court.</p> <p>JCC's recommendation becomes public upon filing. All other materials become public only upon Supreme Court order.</p> <p>Supreme Court reviews JCC's proceedings as to both law and fact, and implements, modifies or rejects JCC's recommendation.</p> <p><i>Note: JCC dismissals are not reviewed by the Supreme Court.</i></p>