



# UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2004

645 South 200 East #104  
Salt Lake City, Utah 84111  
Telephone: (801) 533-3200  
Facsimile: (801) 533-3208

[www.utahbar.org/uljc/judicial\\_conduct\\_commission.html](http://www.utahbar.org/uljc/judicial_conduct_commission.html)

## Creation and Authority of the Judicial Conduct Commission



Although it had existed previously as a legislatively created body, Utah's Judicial Conduct Commission (JCC) was constitutionally established in 1984. See Constitution of Utah, Article VIII, Section 13. The constitution authorizes the Legislature to statutorily establish the composition and procedures of the JCC, and those provisions are found in Utah Code, Title 78, Chapter 8.

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 must review 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.

## Confidentiality of JCC Records and Proceedings



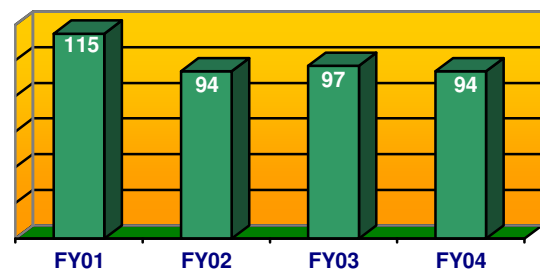
Except in certain limited circumstances specified by statute, all complaints, papers and testimony received or maintained by the JCC, and the record of any confidential hearings conducted by the JCC, are confidential, and cannot be disclosed.

## Number of Complaints Received and Resolved



The JCC receives and investigates about 100 complaints each year. Of that total, approximately 85% are dismissed at the conclusion of the preliminary investigation, either because the basis of the complaint is an appealable issue beyond the JCC's jurisdiction, or because the preliminary investigation fails to produce sufficient facts upon which to warrant additional proceedings.

### Complaints Received Per Year



Of the 94 complaints received in FY 2004, 90 have been dismissed to date, 2 are the subject of ongoing investigations, and 2 resulted in dismissals with a warning (one in FY04 and one to date in FY05).

### Complaints Received in FY 2004

| Judge Type       | Number of Judges | Number of Complaints Received | Number of Judges Named in Complaints |
|------------------|------------------|-------------------------------|--------------------------------------|
| Supreme Court    | 5                | 2                             | 2                                    |
| Court of Appeals | 7                | 0                             | 0                                    |
| District         | 70               | 55                            | 40                                   |
| Juvenile         | 27               | 10                            | 7                                    |
| Justice Court    | 116              | 26                            | 22                                   |
| Pro Tempore      | 148              | 1                             | 1                                    |

## Summary of Sanctions Implemented by the Utah Supreme Court in FY 2004



**Removal.** Third District Juvenile Court Judge Joseph W. Anderson was removed from office by the Utah Supreme Court effective January 23, 2004 in a per curiam opinion that began with these telling words: "Through a series of tragic personal decisions, spread over a period of years, Judge Joseph W. Anderson has effectively prevented himself from performing the duties of the office of juvenile court judge to which he was appointed."

The JCC proceedings were initiated by two written complaints, both alleging delay in Judge Anderson's resolution of child welfare cases. Attorneys from the Office of the Guardian ad Litem (GAL) and the Attorney General's Office (AG) appear in most child welfare cases in the juvenile courts. One of the JCC complaints was filed by the state's GAL director.

After the two complaints were filed with the JCC, Judge Anderson filed a federal lawsuit naming the GAL director and others. In that lawsuit, Judge Anderson alleged that GAL and AG attorneys were less than fully competent and cooperative, and that their actions had led to the delays. He also alleged that the GAL director had made false allegations against him, and had conspired to inappropriately have him removed from the bench. As a result of these allegations, Judge Anderson was disqualified from hearing most child welfare cases.

The JCC determined that Judge Anderson had failed to hold adjudication hearings in a timely manner in nine separate child welfare cases, in violation of state law and despite a Court of Appeals opinion holding that the statutory time limits are mandatory. The JCC also determined that Judge Anderson had failed to rule within 60 days on two cases taken under advisement as required by statute. The JCC concluded that Judge Anderson had violated Code of Judicial Conduct Canon 2A, which requires judges to respect and comply with the law, and recommended that Judge Anderson be publicly reprimanded.

After the JCC filed its findings and recommendation with the Supreme Court, the Supreme Court appointed a special master to take evidence regarding Judge Anderson's ability to fulfill his judicial responsibilities in light of his disqualification from the child welfare cases. The special master conducted extensive hearings and filed a lengthy report with the Supreme Court.

In the following months, the Supreme Court accepted briefs and heard oral arguments from Judge Anderson, the JCC, the Legislature and the Attorney General.

Although the Supreme Court upheld the JCC's findings as to the delays under Canon 2A, it also found that Judge Anderson's "retaliation and intemperate statements" directed at GAL and AG attorneys violated several provisions of Canon 3. The Supreme Court consequently elected to remove Judge Anderson from the bench, rather than merely impose the reprimand originally recommended by the JCC.

## Additional Information Gleaned from the Anderson Opinion



The Supreme Court took the opportunity to address several other issues affecting the JCC, most of which were raised in Judge Anderson's proceedings:

- The purpose of the Supreme Court's review of JCC proceedings is to ensure that "the interests of Utah's citizens, the Judicial Department of state government, and the judge, in that order of priority, are protected."
- The Supreme Court may take additional evidence regarding not only the evidence heard and considered by the JCC, but also events directly related to the JCC's proceedings and recommendation.  
*One justice dissented from this declaration.*
- Private reprimands are not provided for in the state constitution -- if the JCC finds that no public sanction is warranted, the JCC may dismiss a complaint with a warning or upon stated conditions.
- The composition of Utah's JCC, which includes legislators, does not violate the separation of powers provision of the state constitution.
- The fact that Utah's JCC both screens allegations and may later adjudicate them does not violate due process.
- Neither the JCC nor its staff may initiate investigations or proceedings. The JCC and its staff may only act upon complaints brought by someone else.
- The JCC may proceed upon facts discovered in the course of an investigation, even though those facts may differ from the allegations in the original complaint.

The full text of the Supreme Court's opinion is available on the internet at:  
<http://www.utcourts.gov/opinions/supopin/inrein012304.htm>.

## Summary of Additional Actions by the Judicial Conduct Commission in FY 2004



**Dismissal with a Warning.** A complaint against a district judge was dismissed with a warning. The JCC found that the judge, during a telephonic motion hearing, violated Code of Judicial Conduct Canon 3B(4), which requires judges to be patient and dignified to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. The JCC found that the judge's conduct constituted troubling but relatively minor misbehavior for which no public sanction was warranted.

## Legislative Changes During FY 2004



The 2004 Legislature approved one bill amending the statutes that govern the JCC. Senate Bill 161, introduced and enacted after the Supreme Court issued the Anderson opinion, deleted all statutory references to informal (private) reprimands, and amended the statutory definition of "complaint" to conform to language in the Anderson opinion.

## Legislative Audit



In December 2003, the Office of the Legislative Auditor General completed a performance audit of the JCC. The audit included 12 recommendations for change. The JCC will report on its responses to each of the 12 recommendations in December 2004.

## JCC Membership And Staff



### JCC Members

|                       |                       |
|-----------------------|-----------------------|
| Ruth Lybbert, Chair   | Rod Orton, Vice-Chair |
| Rep. Gordon Snow      | Sen. Gene Davis       |
| Rep. Neal Hendrickson | Sen. Michael Waddoups |
| Hon. Russell Bench    | Ronald Russell        |
| Hon. Darwin Hansen    | Flora Ogan            |
| Joe Judd              |                       |

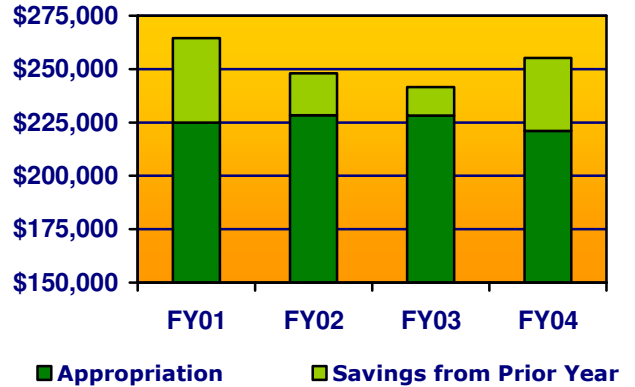
### Staff

Colin Winchester, Executive Director  
 Susan Hunt, Investigator  
 Charles Smalley, Contract Investigator  
 Justine Anderson, Office Technician

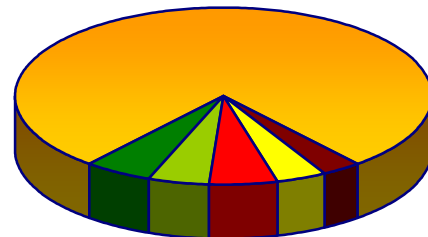
## FY 2004 Budget



Most of the JCC's budget is appropriated annually by the Legislature. Additional funding comes from non-lapsing agency savings. For FY 2004, the legislative appropriation was \$221,100, and savings from the previous year totaled \$34,173, for a total of \$255,273. Of that amount, the JCC spent only \$207,277, saving nearly \$48,000.



Of the \$207,277 spent in FY 2004, nearly 78% was expended for employees' salaries and benefits. Other expenditures are also shown below:



|                      |                       |
|----------------------|-----------------------|
| Salaries & Benefits  | Professional Services |
| Equipment & Supplies | Travel                |
| Rent                 | Office Expense        |

## JCC Website



The JCC's website, containing in-depth information, links to related sites, and a downloadable complaint form, can be accessed at: [www.utahbar.org/uljc/judicial\\_conduct\\_commission.html](http://www.utahbar.org/uljc/judicial_conduct_commission.html).