



# UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2008

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## 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. 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 2008



Of the 72 complaints received in FY 2008, 64 have been investigated and dismissed, one resulted in a dismissal with a warning, and seven are still pending.

### Complaints Received in FY 2008

Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	2	5
Court of Appeals	7	0	0
District	71	43	36
Juvenile	28	6	5
Justice Court	108	17	14
Pro Tempore	114	4	4
<b>Total</b>	<b>333</b>	<b>72</b>	<b>64</b>

## 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



**Censure.** On August 31, 2007, the Supreme Court censured former Third District Court Judge Leslie Lewis. In February 2006, James Scott appeared with his attorney, Roger Kraft, for sentencing before Judge Lewis. After the sentencing, Kraft sent a letter to Judge Lewis indicating his belief that Scott's sentence had been adversely affected by Kraft's presentation at the sentencing hearing. Kraft invited Judge Lewis to contact him with suggestions for future appearances before her. Judge Lewis telephoned Kraft and discussed the sentence. She told Kraft that she would consider changing Scott's sentence, and asked Kraft not to tell the prosecutor about the phone call. Judge Lewis later reduced Scott's sentence. In November 2006, Judge Lewis was not retained by voters in the Third Judicial District.

**Reprimand.** On April 16, 2008, the Supreme Court censured former Riverton City Justice Court Judge Darla Serassio. Judge Serassio, using her own computer and on her own time, had engaged in online gambling from her home. Gambling is illegal in Utah. On two occasions, Judge Serassio asked court personnel to assist her in using the court's fax machine to claim money she had won while gambling. Judge Serassio resigned after she was suspended pending the outcome of the investigation.

### Dismissal with a Warning



On March 13, 2008, the JCC dismissed a complaint against a justice court judge who had engaged in an ex parte communication with the prosecutor, but then disqualified himself from the case. The JCC found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

## Administrative Affairs

### Meetings

The JCC meets as needed on the second Tuesday of each month at the Utah Law & Justice Center in Salt Lake City. The JCC met nine times during FY 2008.

### Administrative Rules

The JCC's administrative rules are available on-line at [www.rules.utah.gov](http://www.rules.utah.gov).

### JCC Commissioners

Ruth Lybbert, Chair	Rod Orton, Vice-Chair
Rep. Douglas Aagard	Sen. Gene Davis
Rep. Neal Hendrickson	Sen. Gregory Bell
Hon. Russell Bench	Ronald Russell
Hon. Royal Hansen	Flora Ogan
Elaine Englehardt, PhD	

### JCC Staff

Colin Winchester, Executive Director  
Susan Hunt, Investigative Counsel  
Charles Smalley, Contract Investigator  
Madison Howard, Office Technician

### Website

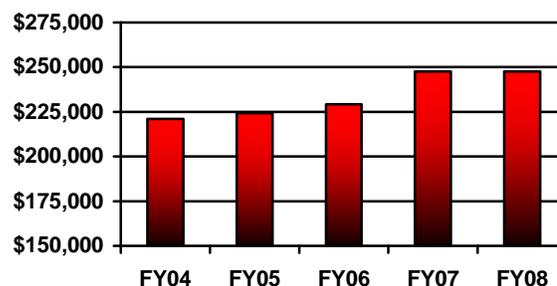
The JCC's website, containing in-depth information, links to related sites, and a downloadable complaint form, can be accessed at [www.jcc.utah.gov](http://www.jcc.utah.gov).

### JCC Statutes

In 2008, the Legislature recodified Title 78. The statutes governing the JCC are now located in Title 78A, Chapter 11.

### Budget

Most of the JCC's budget is appropriated annually by the Legislature. Additional funding comes from non-lapsing agency savings. For FY 2008, the legislative appropriation was \$247,500.



## 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: Information received in any form other than a written complaint is submitted directly to JCC members, who review and discuss the information 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 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 recommendation and 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>