



UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2011

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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 2011

Of the 81 complaints received in FY 2011, 66 have been resolved and 15 are still pending.

Complaints Received in FY 2011			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	0	0
Court of Appeals	7	0	0
District	71	48	52
Juvenile	29	6	6
Justice Court	108	26	27
Pro Tempore	88	1	1
Total	308	81	86

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 December 20, 2010, the Utah Supreme Court reprimanded Parowan Justice Court Judge Kenneth Adams. Judge Adams' son-in-law is Parowan's chief of police. Between January 2008 and March 2010, Judge Adams participated in court proceedings for 36 citations written by his son-in-law without having disqualified or remitted his disqualification. In one additional case, Judge Adams granted a motion to disqualify that challenged the family relationship. The judge's actions violated former Canon 2 of the Code of Judicial Conduct, which requires judges to avoid the appearance of impropriety. Upon being notified of the JCC complaint, Judge Adams implemented a procedure whereby persons who contest citations issued by his son-in-law are notified of the family relationship and given the opportunity to request another judge. Judge Adams also requested an ethics advisory opinion (see Informal Opinion 10-3) and agreed to abide by the guidance given in the opinion.

Censure. On April 6, 2011, the Utah Supreme Court censured former Fillmore and Millard County Justice Court Judge Ronald Hare. Pursuant to a plea in abeyance agreement, Judge Hare pleaded guilty to disorderly conduct after having been arrested for exposing himself in a public restroom. He resigned and agreed to never again hold judicial office in the state. The judge's actions violated Rules 1.1 and 1.2 of the Code of Judicial Conduct, which respectively require judges to comply with the law and to act at all times in a manner that does not undermine the integrity of the judiciary.

Dismissals with Warnings Issued by the Judicial Conduct Commission

Dismissal with a Warning. On November 16, 2010, the JCC dismissed a complaint filed against a justice court judge who had, over a period of five years, made three comments to female court clerks that the clerks perceived as sexually suggestive and that caused the clerks to feel uncomfortable. The judge also forwarded an off-color joke, via e-mail, to two clerks. The judge was extremely remorseful. He had not intended his comments to elicit a sexual response, cause discomfort or bring disrepute to the judiciary. The JCC found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On December 30, 2010, the JCC dismissed a complaint filed against a justice court judge who self-denied a motion to disqualify and continued to take action in a criminal case. The judge referred a subsequent motion to disqualify to another judge for decision, but without having been requested to do so, improperly submitted an affidavit addressing the allegations in the motion. The judge, who had misunderstood the rule governing motions to disqualify, was extremely remorseful and has taken steps to ensure that the behavior is not repeated. The JCC found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissal with a Warning. On April 12, 2011, the JCC dismissed a complaint against a justice court judge who had used the terms "bull" and "what the . . ." in open court. On at least one occasion in open court, the judge referred to the prosecutor as the persecutor. On at least one occasion in open court, upon hearing a baby cry, the judge asked the attorneys present if they had anything to say. 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 ten times during FY 2011.

Administrative Rules

The JCC's administrative rules are available online at www.rules.utah.gov.

JCC Commissioners

Robert Behunin
Elaine Englehardt, Vice-Chair
Hon. Royal Hansen
Rep. Brian King
Constance Lundberg
Sen. Karen Mayne
Hon. Carolyn McHugh
Rep. Kraig Powell
Lois Richins
Ronald Russell, Chair
Sen. Stephen Urquhart

JCC Staff

Colin Winchester, Executive Director
Susan Hunt, Investigative Counsel
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.

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. Additional funding comes from agency savings in prior years. For FY 2011, the legislative appropriation was \$207,200; expenses totaled \$227,182. In order to balance its budget for FY 2011, the JCC was required to use \$19,982 from its prior years' savings.

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>