



UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2013

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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 2013

Of the 86 complaints received in FY 2013, 81 have been resolved and 5 are still pending.

Complaints Received in FY 2013			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	0	0
Court of Appeals	7	1	3
District	71	51	39
Juvenile	29	7	5
Justice Court	98	22	17
Pro Tempore	74	3	3
Active Senior	29	2	2
Total	313	86	69

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

Resolutions Determined by the Utah Supreme Court

Reprimand. On August 22, 2012, the Utah Supreme Court reprimanded retired Woods Cross City Justice Court Judge Robert Peters. Judge Peters initiated and considered an ex parte communication with a person who was on probation, and then revoked that person's probation without following the statutorily mandated procedures. The judge's actions violated: Code of Judicial Conduct Rule 1.2, which requires judges to avoid impropriety and the appearance of impropriety; Code of Judicial Conduct Rule 2.2, which requires judges to apply the law; and Code of Judicial Conduct Rule 2.9(A), which forbids ex parte communications about pending matters.

Dismissal. On September 28, 2012, the Utah Supreme Court rejected the JCC's recommended reprimand of West Valley City Justice Court Judge Keith Stoney. The JCC had recommended that the judge be reprimanded for issuing a \$10,000 cash only bench warrant in response to a woman's inappropriate behavior toward court clerks. The Supreme Court determined that there was insufficient evidence upon which to base a finding that Judge Stoney had violated the Code of Judicial Conduct.

Reprimand. On March 26, 2013, the Utah Supreme Court reprimanded Kanab City Justice Court Judge Gary Johnson. After hearing a small claims trial but before issuing his decision, Judge Johnson first engaged in an ex parte communication with the defendant, and then engaged in an ex parte communication with the plaintiff. The judge's actions violated Code of Judicial Conduct Rule 2.9(A), which forbids ex parte communications about pending matters.

Resolutions Determined by the Utah Supreme Court

Censure. On May 21, 2013, the Utah Supreme Court censured Box Elder County Justice Court Judge Kevin Christensen. Judge Christensen was concurrently employed by the county justice court and three municipal justice courts. From 2009 through 2011, Judge Christensen received combined salaries from the four courts that exceeded the salary limits imposed by the Legislature. The judge's conduct violated Code of Judicial Conduct Rule 1.1, which requires judges to comply with the law. The Court also ordered Judge Christensen to repay the excess salary amounts he had received.

Resolution Obtained by the Judicial Conduct Commission

Retirement. On September 11, 2012, the Judicial Conduct Commission agreed to dismiss any and all pending complaints against West Valley City and Saratoga Springs Justice Court Judge Keith Stoney. Judge Stoney agreed to retire from both courts on December 31, 2012, and agreed not to seek or accept future appointment to any judicial office in the State of Utah.

Administrative Affairs

Meetings

The JCC meets as needed on the third Tuesday of each month at the Utah Law & Justice Center in Salt Lake City. The JCC met ten times during FY 2013.

Administrative Rules

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

JCC Commissioners

Robert Behunin
Elaine Englehardt, Chair
Hon. Deno Himonas
James Jardine
Rep. Brian King, Vice-Chair
Sen. Karen Mayne
Hon. Carolyn McHugh
Rep. Kraig Powell
Lois Richins
Sen. Stephen Urquhart
Terry Welch

During FY 2013, JCC Commissioner Constance Lundberg resigned due to health reasons. Her contribution to the JCC and the citizens of Utah is greatly appreciated.

JCC Staff

Colin Winchester, Executive Director
Susan Hunt, Investigative Counsel
Madison Howard, Office Technician

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 a downloadable complaint form.

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 2013, the legislative appropriation was \$206,600; expenses totaled \$235,589. In order to balance its budget for FY 2013, the JCC was required to use \$28,989 from prior years' savings.

Effective July 1, 2013, the Legislature increased the JCC's annual appropriation by \$25,000 per year. Without that increase, the JCC would not have sufficient funds to operate in FY 2014 and beyond.

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>