UTAH JUDICIAL CONDUCT COMMISSION
ANNUAL REPORT
FY 2019

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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 2019

Of the 64 complaints received in FY 2019, 47 have been resolved and 17 are pending.

Complaints Received in FY 2019

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	72	42	31
Juvenile	31	8	6
Justice Court	98	13	10
Pro Tempore	67	1	1
Active Senior	38	0	0
Total	318	64	48

(*Starting in FY19 and going forward, the JCC counts each judge once even though they may have been named in multiple complaints)

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

On December 28, 2018, the Utah Supreme Court reprimanded Sixth District Juvenile Court Judge Brody Keisel. While overseeing a case, Judge Keisel had numerous out of court conversations regarding substantive matters in the case with the appointed case worker which were not disclosed to the other parties or made part of the record. Judge Keisel recognizes that these communications were ex parte in nature and should have been disclosed to all the parties in the case. Judge Keisel negligently (but not intentionally, willfully or with bad faith) engaged in conduct prejudicial to the administration of justice which brings a judicial office into disrepute. Judge Keisel has accepted responsibility for his actions and has expressed sincere remorse for any harm his actions may have caused. The judge's actions violated Code of Judicial Conduct Rule 2.9.

On May 22, 2019, the Utah Supreme Court suspended Taylorsville Justice Court Judge Michael Kwan. Judge Kwan made politically charged comments to a defendant in his courtroom. He also lost his temper with a member of the court's staff and improperly used his judicial authority to seek that individual's removal from the premises. Moreover, he made online posts critical of then-presidential candidate Donald Trump. These actions constituted conduct prejudicial to the administration of justice which brings a judicial office into disrepute. The judge's actions violated Code of Judicial Conduct Rules 1.2, 1.3, 2.8, 3.1 and 4.1(A)(3).

Dismissals with Warnings Issued by the Judicial Conduct Commission

On July 17, 2018, the Judicial Conduct Commission dismissed a complaint with warning against a District Court Judge as to the Rule 2.8(b) violation of impatient and discourteous behavior. The Judge was impatient and not courteous to a litigant attorney and made comments that did not reflect an appropriate judicial temperament. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On September 18, 2018, the Judicial Conduct Commission dismissed a complaint with warning to a Justice Court Judge as to violations of Rules 1.1, 1.2. 2.5(A), and UCA §78A-11-108. Court personnel observed the judge not making decisions, falling asleep on the bench, behaving groggily, failing to maintain a government provided email, discussing cases with a retired judge and overusing prescribed medication. The Judge agreed to a mentorship and oversight program. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted upon successful program completion.

Dismissals with Warnings Issued by the Judicial Conduct Commission

On September 18, 2018, the Judicial Conduct Commission determined to dismiss a complaint with warning to Justice Court Judge as to the violations of Rules 1.2 and 1.3. The Judge, identifying themselves as a judge, contacted a court clerk on behalf of a friend to get information on a case. Subsequently, the Judge, again in a personal capacity, attended a court hearing on this case and identified as a judge to the prosecutor. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On September 18, 2018, the Judicial Conduct Commission dismissed a complaint with warning to a Juvenile Court Judge as to a Rule 1.2 violation of not promoting confidence in the Judiciary. The Judge engaged in personal communications with a party on sexual topics and intimate matters that were highly inappropriate and when made public did not promote, and in fact, undermined public confidence in the judiciary. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On September 18, 2018 the Judicial Conduct Commission dismissed a complaint with warning to a District Judge as to the Rule 2.9(A)(1)(3)(C) violations of ex parte communications by the Judge. The Judge was informed of possible jury improprieties, had conversations regarding it with a non-party and never disclosed or made a record of those conversations. Subsequently, the case was settled. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On May 21, 2019, the Judicial Conduct Commission dismissed a complaint with a warning to a Justice Court Judge as to violations of Rules 2.3(A) (Bias) and 2.8(B) (Demeanor). From the bench the Judge made the statement "there are certain people who I don't trust at all that are members of the bar, and uh, they generally tend to try to work around other attorneys and judges and going through clerks and other people . . ." The JCC found and the Judge agreed that these comments evidenced bias and were demeaning to the attorney present. However, the JCC also 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 third Tuesday of each month at the offices of the JCC. The JCC met ten (10) times during FY 2019.

Administrative Rules

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

FY19 JCC Commissioners

Neal Cox, Public Member
Mark Raymond, Public Member
Georgia Beth Thompson, Public Member
Terry Welch, Attorney Member (term exp.)
Cheylynn Hayman, Attorney Member (new)
James Jardine, Chair, Attorney Member
Rep. Elizabeth Weight
Rep. Craig Hall
Sen. Jani Iwamoto
Sen. Lyle Hillyard
Hon. David Mortensen
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 2019, the legislative appropriation was $279,200. The JCC had non-lapsing savings from FY 2018 in the amount of $29,617. The JCC had total available funds of $308,817. JCC expenses for FY 2019 were $247,735, leaving a balance of $61,082 to be included in non-lapsing savings for FY 2020.

JCC Staff

Alex G. Peterson, Executive Director
Aimee Thoman, Investigative Counsel

UTAH JUDICIAL CONDUCT COMMISSION – COMPLAINT RESOLUTION PROCESS				
INITIAL SCREENING	**PRELIMINARY INVESTIGATION**	**FULL INVESTIGATION**	**FORMAL PROCEEDINGS**	**SUPREME COURT**
Executive Director reviews each "complaint" to determine whether it is a complaint within the JCC's jurisdiction. Staff returns non-JCC complaints (i.e., complaints against bar members or court employees) to complainant with appropriate instructions. For JCC complaints, staff prepares electronic and hard-copy files, sends acknowledgment letter to complainant, and returns hard-copy file to Executive Director. Executive Director assigns investigator. *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.*	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. Executive Director reviews preliminary investigation report and recommendation, and may revise either. Staff distributes preliminary investigation report and recommendation, along with pertinent materials, to JCC members. 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.	Staff provides judge with copy of complaint and other pertinent materials and asks judge to respond in writing to identified allegations. 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. Staff distributes judge's response and any supplemental investigation report and recommendation, along with pertinent materials, to JCC members. 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.	Staff prepares formal complaint and serves same upon judge via certified mail. Judge may file written response. Matter may be resolved by dismissal, stipulated resolution or confidential hearing. A stipulated resolution may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement After a confidential hearing, the JCC may dismiss the matter or may recommend: Reprimand Censure Suspension Removal from Office Involuntary Retirement	Staff files JCC's findings of fact, recommendation and other statutorily required materials with Supreme Court. JCC's recommendation becomes public upon filing. All other materials become public only upon Supreme Court order. Supreme Court reviews JCC's proceedings as to both law and fact, and implements, modifies or rejects JCC's recommendation. *Note: JCC dismissals are not reviewed by the Supreme Court.*