



# UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2006

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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. 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 in FY 2006



The JCC generally receives and investigates about 100 complaints each fiscal 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. In FY 2006, the JCC received 98 new complaints.

Complaints Received in FY 2006			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	1	1
Court of Appeals	7	0	0
District	71	59	34
Juvenile	26	6	5
Justice Court	112	27	18
Pro Tempore	128	5	5
<b>Total</b>	<b>349</b>	<b>98</b>	<b>63</b>

Of the 98 complaints received in FY 2006, 89 have been dismissed, three resulted in dismissals with warnings summarized later in this report, and six are the subject of ongoing investigations. The complaints resulting in the removal and the two reprimands summarized later in this report were received during previous fiscal years.

## FY 2006 – Sanctions and Other Resolutions

### Sanctions Implemented by the Utah Supreme Court



**Removal.** On February 24, 2006, the Utah Supreme Court removed Hildale Justice Court Judge Walter K. Steed from office for engaging in the practice of plural marriage. Judge Steed had served as a part-time justice court judge since 1980. He is legally married to one woman, and has been sealed in religious ceremonies to two other women. He is a member of the Fundamentalist Church of Jesus Christ of Latter-day Saints, and engages in plural marriage as a practicing member of that faith. Judge Steed and the three women were all adults at the time they entered into the respective relationships, and all entered into those relationships consensually. The Supreme Court agreed with the JCC's finding that Judge Steed willfully engaged in bigamy, in violation of Utah law, and that by so doing, violated Canon 2A of the Code of Judicial Conduct, which requires judges to respect and comply with the law.

**Reprimand.** On November 1, 2005, the Utah Supreme Court reprimanded Taylorsville Justice Court Judge Michael W. Kwan for making an inappropriate statement during an argument in a criminal case. Judge Kwan, defense counsel and the prosecutor engaged in a lengthy discussion about whether the prosecutor had complied with previous discovery orders. Judge Kwan stated that the prosecutor's position was similar to President Clinton claiming that although he understood that he was not supposed to have sex outside of marriage, nobody had told him that he couldn't put his penis in somebody else's mouth. The Supreme Court agreed with the JCC's finding that Judge Kwan violated Canon 3B(4) of the Code of Judicial Conduct, which requires judges to be patient, dignified and courteous.

**Reprimand.** On June 1, 2006, the Utah Supreme Court reprimanded Seventh District Court Judge Bruce K. Halliday for visiting a probationer outside of court. Judge Halliday placed a woman on probation under the supervision of AP&P. Because Judge Halliday was concerned about the welfare of the woman and her family, he met with her on four separate occasions outside of court. The meetings did not include the probation officer, the prosecutor or defense counsel. Judge Halliday's actions were driven solely by his goal of reducing recidivism, and were well intentioned. The Supreme Court agreed with the JCC's finding that Judge Halliday violated Canons 1 and 2A of the Code of Judicial Conduct, in that his actions created the appearance of impropriety and adversely affected the integrity and independence of the judiciary.

### Dismissals with Warnings Issued by the Judicial Conduct Commission



Several years ago, an attorney/small claims judge pro tem issued a judgment in a small claims case. Later, the attorney's legal assistant agreed to assist the defendant in attempting to set the judgment aside. The legal assistant prepared a motion, and the attorney signed the motion while signing other documents. The attorney did not intend to become involved in the litigation, and did not intend to practice law in the same small claims division in which he serves as a judge pro tem. The JCC found that the attorney/judge violated the applicability section of the Code of Judicial Conduct, which prohibits attorneys from practicing in the small claims division in which they serve as judges pro tem, but that under the circumstances, the conduct constituted only troubling but relatively minor misconduct for which no public sanction was warranted.

A justice court judge, at the request of counsel but without a subpoena, signed an affidavit explaining a ruling in a misdemeanor case. Counsel filed the affidavit in federal court in support of a particular legal position in a pending civil case. The JCC found that the judge violated Canon 3B(9), which prohibits judges from making public statements that might reasonably be expected to affect the outcome of a pending proceeding, but that under the particular facts and circumstances presented, the conduct constituted only troubling but relatively minor misconduct for which no public sanction was warranted.

A justice court judge authored a letter endorsing and recommending a specific counseling program. Copies of the judge's letter were included by the program's administrators in promotional materials sent to other judges throughout the state. The judge's sole intent was to benefit criminal offenders, and not to secure any financial benefit to himself or the program. When approached by the JCC, the judge immediately recognized and apologized for his conduct, and took appropriate action to ensure against future similar violations. The JCC found that the judge violated Canon 2B, which prohibits judges from lending the prestige of the judicial office to advance the private interests of others, but that the conduct constituted only troubling but relatively minor misconduct for which no public sanction was warranted.

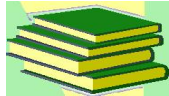
# FY 2006 – Administrative Affairs

## Legislative Changes



During the 2006 General Session, the Legislature passed Senate Bill 62, which made several technical changes to the statutes that govern the JCC. The amendments became effective on May 1, 2006.

## Administrative Rules



No significant changes were made to the JCC's administrative rules during FY 2006. The JCC's rules are available on-line at [www.rules.utah.gov](http://www.rules.utah.gov).

## 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 eleven times during FY 2006.

## Website



The JCC's current website, containing in-depth information, links to related sites, and a downloadable complaint form, can be accessed at [www.utahbar.org](http://www.utahbar.org). A new website, to be hosted by the State of Utah, will soon be created and implemented. Once that is accomplished the current website, hosted by the Utah State Bar, will be allowed to expire.

## Commissioners and Staff



### JCC Members

Ruth Lybbert, Chair  
 Rep. Gordon Snow  
 Rep. Neal Hendrickson  
 Hon. Russell Bench  
 Hon. Darwin Hansen  
 Joe Judd

Rod Orton, Vice-Chair  
 Sen. Gene Davis  
 Sen. Michael Waddoups  
 Ronald Russell  
 Flora Ogan

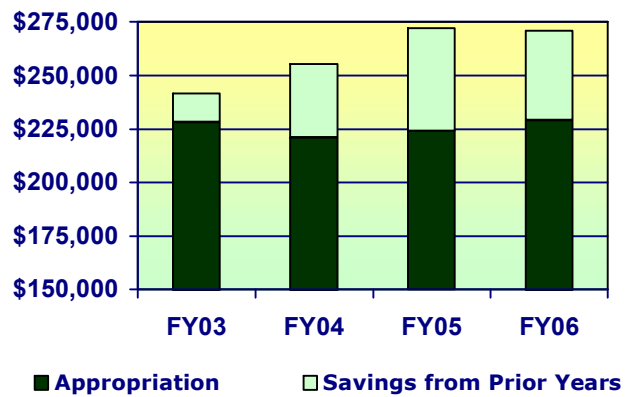
### Staff

Colin Winchester, Executive Director  
 Susan Hunt, Investigative Counsel  
 Charles Smalley, Contract Investigator  
 Justine Dimick, Office Technician

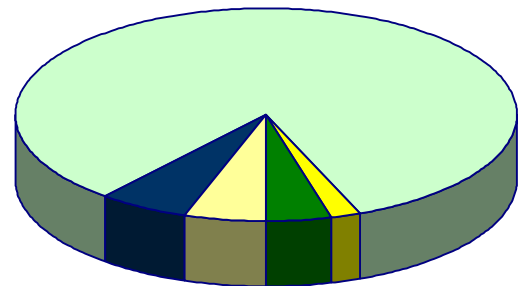
## Budget



Most of the JCC's budget is appropriated annually by the Legislature. Additional funding comes from non-lapsing agency savings. For FY 2006, the legislative appropriation was \$229,200, and savings from previous years totaled \$41,644, for a total of \$270,844. The JCC spent only \$216,815, saving approximately \$54,000.



Of the \$216,815 spent in FY 2006, nearly 77% was expended for employees' salaries and benefits. Other expenditures are also shown below:



- Salaries & Benefits
- Equipment & Supplies
- Travel
- Rent
- Office Expense