



UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2012

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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 2012

Of the 96 complaints received in FY 2012, 72 have been resolved and 24 are still pending.

Complaints Received in FY 2012			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	2	1
Court of Appeals	7	3	4
District	71	58	44
Juvenile	29	6	4
Justice Court	96	24	16
Pro Tempore	76	3	3
Active Senior	30	0	0
Total	314	96	72

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

There were no public sanctions implemented by the Utah Supreme Court during FY 2012.

Sanctions Recommended by the Judicial Conduct Commission

Reprimand. On August 24, 2011, the JCC recommended that Justice Court Judge Keith Stoney be reprimanded for issuing a \$10,000 cash only bench warrant in response to a woman's inappropriate behavior toward court clerks. At the conclusion of FY 2012, the recommendation was pending before the Utah Supreme Court.

Reprimand. On April 23, 2102, pursuant to stipulation, the JCC recommended that retired Justice Court Judge Robert Peters be reprimanded for, in a criminal case: (1) engaging in an ex parte communication with a law enforcement official; and (2) pursuant to the information obtained in the communication, revoking the defendant's probation without following the statutory procedures. At the conclusion of FY 2012, the recommendation was pending before the Utah Supreme Court.

Censure. On May 31, 2012, pursuant to stipulation, the JCC recommended that Justice Court Judge Kevin Christensen be censured for having received combined salaries in excess of the amount allowed by law. State law provides that a justice court judge employed by more than one governmental entity may not receive a total salary for service as a justice court judge greater than the salary of a district court judge. Judge Christensen serves in four courts, and received excessive salaries for calendar years 2009 through 2011. Judge Christensen reserved the right to challenge the constitutionality of the salary limitation statute, and that challenge is pending before the Utah Supreme Court.

Dismissals with Warnings Issued by the Judicial Conduct Commission

Dismissal with a Warning. On December 22, 2011, the JCC dismissed a complaint filed against a justice court judge who engaged in an ex parte scheduling discussion with a small claims litigant without promptly notifying the other party and giving the other party the opportunity to respond. The JCC found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

Dismissals with a Warning. On March 12, 2012, the JCC issued two dismissals with a warning to a justice court judge, having found that the misconducts were troubling but relatively minor misbehavior for which no public sanction was warranted. When a JCC complaint is dismissed, JCC rules allow the complainant to request that the investigation be re-opened. The complainant made such a request, which the JCC granted. The two dismissals with a warning are on hold pending the outcome of the additional investigation.

Dismissal with a Warning. On June 12, 2012, the JCC dismissed a complaint filed against a district court judge who sentenced a defendant: (1) without providing the defendant the opportunity to be sentenced between 2 and 45 days later, as provided by statute; and (2) without giving the defendant the opportunity to address the court prior to sentencing. 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 2012.

Administrative Rules

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

JCC Commissioners

Robert Behunin
Elaine Englehardt, Chair
Hon. Deno Himonas
James Jardine
Rep. Brian King
Constance Lundberg, Vice-Chair
Sen. Karen Mayne
Hon. Carolyn McHugh
Rep. Kraig Powell
Lois Richins
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 2012, the legislative appropriation was \$206,600; expenses totaled \$239,742. In order to balance its budget for FY 2012, the JCC was required to use \$33,142 from its prior years' savings.

Because the JCC's savings from prior years will likely be depleted during FY13, it will be incumbent on the Legislature to increase the JCC's annual appropriation for future fiscal years.

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>