



# UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2014

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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 2014

Of the 74 complaints received in FY 2014, 67 have been resolved and 7 are still pending.

Complaints Received in FY 2014			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	1	5
Court of Appeals	7	1	1
District	72	42	32
Juvenile	30	9	8
Justice Court	98	20	17
Pro Tempore	63	1	1
Active Senior	35	0	0
<b>Total</b>	<b>310</b>	<b>74</b>	<b>64</b>

## 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

**Censure.** On October 11, 2013, the Utah Supreme Court censured former Salt Lake City Justice Court Judge Virginia Ward. Judge Ward had pleaded guilty to possession of a controlled substance with intent to distribute, a second degree felony. She resigned her judicial office before entering her plea. As provided in Constitution of Utah, Article VIII, Section 13, final conviction of a felony is grounds for judicial discipline.

**Reprimand.** On April 22, 2014, the Utah Supreme Court reprimanded Second District Juvenile Court Judge J. Mark Andrus. During an adoption hearing, Judge Andrus became frustrated. He repeatedly raised his voice and interrupted the child's grandfather. The judge's actions violated Code of Judicial Conduct Rule 2.8(B), which requires judges to be patient, dignified and courteous to persons with whom they deal in an official capacity.

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

**Dismissal with a Warning.** On November 5, 2013, the JCC dismissed a complaint filed against a district court judge who included comments in the certification of a motion to disqualify. The JCC found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

**Dismissals with Warnings.** In March 2012, the JCC issued two dismissals with warnings, both arising from the same complaint, to a justice court judge who had engaged in ex parte communications. The JCC found that the misconducts were troubling but relatively minor misbehavior for which no public sanction was warranted. The complainant requested that the investigations be re-opened, and the JCC granted that request. After a criminal trial against the judge resulted in acquittal, and after additional investigation and consideration, the JCC determined that the original dismissals with warnings were appropriate.

## 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 11 times during FY 2014.

### Administrative Rules

The JCC's administrative rules are available on-line at [www.rules.utah.gov](http://www.rules.utah.gov).

### JCC Commissioners

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

In April 2014, Hon. Stephen Roth was appointed to fill a vacancy created by Hon. Carolyn McHugh's confirmation to the Tenth Circuit Court of Appeals.

### JCC Staff

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

### Website

The JCC's website, [www.jcc.utah.gov](http://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 2014, the legislative appropriation was \$240,400. The JCC contributed \$200 in savings from FY 2013, and the Legislature authorized an additional \$300 to cover the cost of increased 401(k) contributions. JCC expenses for FY 2014 were \$242,992 (an over-expenditure of \$2,092).

## 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>