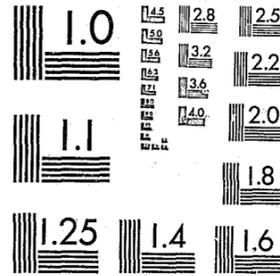


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Commission On Judicial Discipline State of Hawaii

Second Annual Report
1981

85742

NCJRS

Oct 5 1982

SECOND ANNUAL REPORT
of the
COMMISSION ON JUDICIAL DISCIPLINE
STATE OF HAWAII
(for the period July 1, 1980 to June 30, 1981)

COMMISSION MEMBERS

KAZUHISA ABE, Chairman

ROBERT L. STEVENSON, Vice-Chairman

YOSHIAKI NAKAMOTO

JACKIE MAHI ERICKSON

THE REVEREND CHARLES T. CRANE

J. W. A. BUYERS

MAN KWONG AU

P. O. Box 2560
Honolulu, Hawaii 96804-2560

August, 1981

U.S. Department of Justice
National Institute of Justice

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Hawaii Commission on
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COMMISSION ON JUDICIAL DISCIPLINE
State of Hawaii
Post Office Box 2560
Honolulu, Hawaii 96804

August 15, 1981

The Honorable William S. Richardson
Chief Justice
Supreme Court of Hawaii
Aliiolani Hale
Honolulu, Hawaii 96813

Dear Mr. Chief Justice:

The Commission on Judicial Discipline, in compliance with Hawaii Supreme Court Rule 26.1, submits a report of its activities covering the period July 1, 1980 to June 30, 1981.

The Commission continued to work smoothly during its second year of existence, during which time only eight complaints were received.

The members of the Commission were profoundly saddened by the untimely death in July, 1980, of Commissioner Wilson P. Cannon. His contributions to the commission were highly valued and his warm human quality will be missed.

Your appointment of a new member to replace Mr. Cannon and the reappointment of three members have given back to the Commission its full quorum.

Respectfully yours,

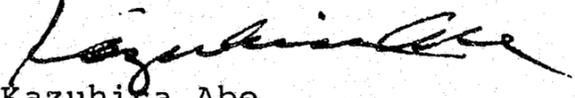

Kazuhisa Abe
Chairman

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PART I. BACKGROUND INFORMATION

Organization, Jurisdiction and Powers

The establishment of the Commission on Judicial Discipline was mandated by the 1978 Amendment of Article VI, Section 5, of the Hawaii Constitution. On June 1, 1979, the Supreme Court of Hawaii promulgated Rule 26 of its Rules of Court, establishing the Commission, its powers and procedures. (See Appendix A)

The members of the Commission are appointed by the Supreme Court to staggered three-year terms. The Commission consists of seven members; three are attorneys and four are citizens who are not judges, retired judges or lawyers. Members of the Commission serve without compensation and have absolute immunity from suit for all conduct in the course of their official duties.

The commission has the power to:

- Receive information, allegations and complaints;
- Make preliminary evaluations;
- Screen complaints;
- Conduct investigations;
- Conduct hearings; and
- Recommend dispositions to the Supreme Court concerning allegations of judicial misconduct or physical or mental disability.

In general, grounds for misconduct discipline include:

- Conviction of a felony;
- Willful misconduct in office;
- Willful misconduct, which, although not related to judicial duties, brings the judicial office into disrepute;
- Conduct prejudicial to the administration of justice.

Determination of disability includes mental and physical disability.

Complaint Procedure and Formal Proceedings

Any person may initiate an inquiry on the conduct of a judge. Upon receipt of a complaint, the Commission determines if there is sufficient cause to proceed with an inquiry or make a disciplinary recommendation to the Supreme Court.

Even though the Commission may find no further proceedings are necessary, it may recommend to the Supreme Court that the Court:

- Issue a private reprimand; or
- Admonish the judge that his or her conduct may be cause for discipline; or
- Direct professional counseling or assistance to the judge; or
- Impose conditions on the judge's conduct.

If a formal hearing is held and all findings of the Commission are supported by clear and convincing evidence, the Commission submits, in every case, a report of its findings to the

Supreme Court and may recommend any of the following sanctions:

- Removal;
- Retirement;
- Imposition of limitations or conditions on the performance of judicial duties, including suspension with or without pay;
- Reprimand or censure; or
- Any combination of the above sanctions.

All proceedings involving allegations of misconduct or disability are confidential unless the Supreme Court enters an order for the imposition of public discipline or the judge requests the matter be made public.

PART II. OPERATION OF THE COMMISSION

Complaints Received

The Commission received a total of eight complaints during fiscal year 1980-81. Together with two cases carried over from the previous fiscal year, the Commission completed evaluations of nine complaints. One complaint was still under investigation as of June 30, 1981.

Of the nine complaints evaluated, seven were dismissed because they either fell outside the jurisdiction of the Commission, the complaint was unfounded, or it was determined the judge's actions did not evidence judicial misconduct. Six of these complaints were from citizens who were dissatisfied with the judges' actions on cases in which they were involved. Of these, five were domestic-related cases and one arose from a civil case.

On two cases, although the Commission determined disciplinary actions were not warranted, it expressed concern regarding:

1) A judge's courtroom demeanor. The Commission felt the increasing public interest in the criminal justice system makes it even more imperative that those in the judicial system conduct themselves in a manner which will encourage public support and acceptance.

2) A judge's making comments publicly on a matter which relate to a defendant's guilt or innocence. The Commission felt, although judges have the responsibility of informing the public about general matters, and that responsibility should not be diminished, they should not make public statements from which their personal opinions may be inferred.

Educational Activities

Chairman Kazuhisa Abe and Vice-Chairman Robert L. Stevenson attended the Seventh National Conference for Judicial Conduct Organizations October 15-18 in New Orleans. The conference brought members of judicial conduct commissions together to discuss common problems; judicial conduct commissions now exist in 49 states and the District of Columbia.

The Center for Judicial Conduct Organizations is a service sponsored by the American Judicature Society. Members of the Hawaii Commission receive monthly and quarterly publications from the Center, as well as newspaper clippings, articles of interest and documents on judicial discipline cases from throughout the United States.

The Center recently distributed a 500-page volume entitled, JUDICIAL DISCIPLINE AND DISABILITY DIGEST, which contains more than 400

individual judicial discipline cases which occurred from 1960 to 1978.

Members

On June 25, the Hawaii Supreme Court reappointed three members and appointed a new member to replace Wilson P. Cannon, who died on July 27, 1980. (See Order of Appointment - Appendix B)

The members of the Commission and their terms of office are:

Term expiring May 31, 1982:

- Kazuhisa Abe, a former associate justice of the Hawaii Supreme Court and an attorney in private practice, chairman;
- Robert L. Stevenson, retired president of First Insurance Company of Hawaii, vice-chairman; and
- Yoshiaki Nakamoto, deputy corporation counsel, City and County of Honolulu.

Term expiring May 31, 1983:

- The Reverend Charles T. Crane, pastor of the Church of the Holy Nativity; and
- J. W. A. Buyers, president and chief executive officer, C. Brewer and Co., Ltd.

Term expiring May 31, 1984:

- Jackie Mahi Erickson, legal counsel, Hawaiian Electric Co., Inc.

Term expiring June 30, 1984:

- Man Kwong Au, businessman.

Assistance

The Commission does not employ a staff. The Judiciary's staff attorney and a deputy assigned by the State Attorney General to The Judiciary provide legal counsel to the Commission.

The secretary to the administrative director of the courts serves as secretary to the Commission.

APPENDIX A

Rule 26. JUDICIAL DISCIPLINE.

26.1 Organization of Commission.

(a) **Membership; Chairperson.** The supreme court shall appoint a commission to be known as the Commission on Judicial Discipline which shall consist of seven members; three members shall be attorneys licensed to practice in the State of Hawaii, one of whom shall be designated by this court as chairperson, and four members shall be citizens who are not judges, retired judges or lawyers, one of whom shall be designated by this court as vice-chairperson.

(b) **Terms.** All members shall be appointed to staggered three-year terms; however, to maintain a commission with staggered terms, initial appointments may be for less than three years.

(c) **Compensation.** Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(d) **Quorum; Number of Votes for Action.** A majority of the total membership of the Commission shall constitute a quorum for the transaction of business, and the concurrence of a majority of the total membership shall be necessary to validate any action.

Rule 26.1

(e) **Meetings.** Meetings of the Commission shall be held at the call of the chairperson or upon the written request of a majority of the members of the Commission.

(f) **Annual Report.** At least once a year the Commission shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the supreme court.

(g) **Non-participation by Members.** Commission members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, it shall become necessary for the continuation of a case or orderly operation of the Commission, the supreme court may appoint, for that case only, one or more ad hoc members as it deems necessary.

26.2 Jurisdiction and Powers of Commission.

(a) **Powers in General.** The Commission shall have the power to:

- (1) Receive information, allegations, and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints;
- (4) Conduct investigations;
- (5) Conduct hearings; and

(6) Recommend dispositions to the supreme court concerning allegations of judicial misconduct or physical or mental disability of judges.

(b) **Persons Subject to Discipline.** Any sitting justice or judge, full-time or part-time, shall be subject to the jurisdiction of the Commission.

(c) **Exclusive Jurisdiction of Commission.** Notwithstanding the provisions of Rule 16.1 of the Disciplinary Rules of the Supreme Court, only this commission shall have the authority to exercise the powers specified in Rule 26.2 with respect to conduct or competence of any justice or judge occurring during the time of, and prior to, his or her tenure on the bench; provided that any proceedings of the Disciplinary Board of the Supreme Court as to conduct or competence which occurred prior to the judicial tenure of the justice or judge, and which proceedings the Disciplinary Board commenced prior to the judicial tenure of the justice or judge, may be concluded; and provided further that a civil or a criminal action may be brought in a court of law against any justice or judge to the extent that such an action may be brought against any person.

(d) Subpoena and Discovery.

(1) In matters before the Commission the chairperson may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the judge as witness, and to provide for the inspection of documents, books, accounts, and other records.

(2) The power to enforce process may be delegated by the supreme court to any other court.

(e) **Rules of Procedure and Forms.** The Commission shall have the authority to submit rules of procedure for the approval of the supreme court, and to develop appropriate forms for its proceedings.

26.3 Immunity.

Members of the Commission and special counsel appointed by the supreme court shall be absolutely immune from suit for all conduct in the course of their official duties.

26.4 Confidentiality.

(a) **In General.** All proceedings involving allegations of misconduct by or disability of a judge shall be kept confidential until and unless the supreme court enters an order for the imposition of public discipline or the judge requests that the matter be public. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceedings.

(b) **Disclosure.** This provision shall not be construed to automatically deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice or to law enforcement agencies investigating qualifications for government employment; such information may be released upon concurrence of the Commission or by order of the supreme court.

(c) **Public Statements by Commission.** In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the Commission may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without pre-judgment, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for his or her comments and criticisms prior to its release, but the Commission in its discretion may release the statement as originally prepared.

26.5 Grounds For Discipline.

(a) **In General.** Grounds for discipline shall include:

- (1) Conviction of a felony;
- (2) Willful misconduct in office;
- (3) Willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute;

(4) Conduct prejudicial to the administration of justice or conduct that brings the judicial office into disrepute;

(5) Any conduct that constitutes a violation of the Code of Judicial Conduct.

(b) **Proceedings Not Substitute for Appeal.** In the absence of fraud, corrupt motive, or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he or she understands it. Claims of error shall be left to the appellate process.

26.6 Complaint Procedure.

(a) Initiation of Procedure.

(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable basis, including written complaints made by judges, lawyers, court personnel, or members of the general public.

(2) The Commission may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.

(3) Upon request of the chief justice of the supreme court, the Commission shall make an investigation under this rule of the conduct or physical or mental condition of a judge.

(b) **Privilege.** A qualified privilege shall attach to a complaint submitted to the Commission or testimony related to the complaint, and any civil action predicated on such complaint instituted against any complainant or witness, or their counsel, shall be subject to said qualified privilege.

(c) **Discretionary Notice.** Notice that a complaint has been made may be given to the judge named in the complaint.

(d) **Screening of Complaints.** Upon receipt of a complaint, the Commission shall determine whether such complaint warrants investigation and evaluation. Complaints determined to be frivolous, unfounded or outside the jurisdiction of the Commission shall not be investigated.

(e) **Mandatory Notice.** After the determination that a complaint warrants investigation and evaluation, notice that a complaint has been made shall be given to the judge.

(f) **Preliminary Investigation and Evaluation.** Upon receipt of a complaint, report, or other information as to conduct that might constitute grounds for discipline, the Commission shall conduct a

prompt, discreet, and confidential investigation and evaluation. The Commission may delegate one of its members to conduct such investigation and evaluation.

(g) **Determination.** After conclusion of the investigation and evaluation, the Commission shall determine:

(1) That there is insufficient cause to proceed against the judge; or

(2) That there is sufficient information to make a disciplinary recommendation to the supreme court; or

(3) That further proceedings regarding the complaint are necessary.

(h) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the file shall be closed. If previously notified of a complaint, a judge shall be notified that the file has been closed.

(2) A closed file may be referred to by the Commission in subsequent proceedings.

(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed may be released by the Commission.

(i) **Dispositions in Lieu of Further Proceedings.** Even though the Commission does not find that further proceedings are necessary, it may recommend to the supreme court that the court:

(1) Issue a private reprimand; or

(2) Inform or admonish the judge that his or her conduct is or may be cause for discipline; or

(3) Direct professional counseling or assistance for the judge; or

(4) Impose conditions on the judge's conduct.

26.7 Appointment of Special Counsel.

Upon determining that further proceedings should be had, the Commission shall request the supreme court to appoint special counsel to further investigate the matter. Counsel, upon further investigation, shall either report to the Commission that a formal hearing is not necessary or institute formal disciplinary proceedings as provided in Rule 26.9.

26.8 Determination on Report of Special Counsel.

Upon receipt of special counsel's report that a formal hearing is not necessary, the Commission shall determine whether to close the

file as provided by Rule 26.6(h) or make a recommendation to the supreme court as provided by Rule 26.6(i).

26.9 Formal Hearing.

(a) **Complaint or Statement.** Formal disciplinary proceedings shall be instituted by special counsel by filing with the Commission a detailed sworn complaint signed by the complainant. If a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by special counsel. Where more than one act of misconduct is alleged, each shall be clearly set forth. A copy of the complaint or statement of allegations shall be served upon the judge.

(b) **Answer.** The judge shall serve his or her answer upon special counsel and file the original with the Commission within 20 days after the service of the complaint or statement of allegations unless such time is extended by the chairperson. In the event the judge fails to answer, the charges shall be deemed admitted; provided, however, that a judge who fails to answer within the time provided may obtain permission of the chairperson to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect.

(c) **Termination After Answer.** At any time after service of the answer, the Commission may terminate the proceeding and dismiss the complaint, and shall in that event give notice to each complainant and to the judge that it has found insufficient cause to proceed.

(d) **Notice of Hearing.** Following service of the answer the matter may be set for hearing before the Commission. The Commission shall serve a notice of hearing upon special counsel and the judge, or his or her counsel, stating the date and place of the hearing.

(e) **Presentation; Cross-Examination; Evidence.** At the hearing, the judge shall be entitled to counsel of his or her own choice, shall be entitled to compel by subpoena the attendance and testimony of witnesses and to provide for the inspection of documents, books, accounts, and other records, and shall have a full opportunity to confront and cross-examine the complainant and other witnesses presented by special counsel and to present evidence on his or her own behalf.

The Commission shall not be bound by the formal rules of

evidence, but shall admit only trustworthy evidence. The Commission shall not rely upon any evidence outside the formal record in reaching its decision.

(f) **Findings and Recommendations.** All findings of the Commission shall be supported by clear and convincing evidence. The Commission shall, in every case, submit a report containing its findings and recommendations, together with a record of its proceedings, to the supreme court within 60 days after the conclusion of its hearing. The Commission may recommend to the supreme court any of the following sanctions:

- (1) Removal;
- (2) Retirement;
- (3) Imposition of limitations or conditions on the performance of judicial duties, including suspension with or without pay;
- (4) Reprimand or censure; or
- (5) Any combination of the above sanctions.

26.10 Review by Supreme Court.

After the filing of the Commission's report a copy thereof shall be served on the judge. The judge may file exceptions to the report within 20 days from the date of service of a copy thereof or within an additional period not to exceed 20 days granted by the court for good cause shown. Within 60 days after the filing of the report and the filing of exceptions, if any, the judge shall file an opening brief pursuant to the rule governing civil appeals; and other briefs may be filed and oral argument may be had as therein provided. Upon conclusion of the proceedings, the court shall promptly enter an appropriate order.

26.11 Charge Against Supreme Court Justice.

Any charge filed against a member of the supreme court shall be heard and submitted to the court in the same manner as charges concerning other judges, except that the member being charged shall be automatically disqualified. A panel of at least three justices shall hear the matter. In the event that there are less than three justices remaining on the court, the chief justice or the most senior associate justice remaining on the court shall appoint a judge of the intermediate court of appeals, a circuit court judge, a retired justice of the supreme court, or any combination thereof to sit in the matter.

26.12 Interim Sanctions.

(a) **Suspension for Felony.** A judge shall be suspended with pay immediately by the supreme court without necessity of Commission

action, upon the filing of an indictment or complaint charging him or her with a felony under state or federal law. Such suspension shall not preclude action by the Commission with respect to the conduct which was the basis for the felony charge, before or after a conviction, acquittal, or other disposition of the felony charge.

(b) Suspension for Misdemeanor. Conduct resulting in the filing of misdemeanor charges against a judge, if it adversely affects his or her ability to perform the duties of his or her office, may be grounds for immediate suspension with pay by the supreme court, without necessity of Commission action. A conviction, acquittal, or other disposition on a misdemeanor charge, shall not preclude action by the Commission with reference to the conduct upon which the charge was based.

(c) Misdemeanor Suspension Review. Any judge suspended under Rule 26.12(b) shall be given a prompt hearing and determination by the supreme court upon his or her application for review of the interim suspension order.

(d) Other Interim Suspension.

(1) Interim suspension, with pay, pending final decision as to ultimate discipline, may be ordered by the supreme court in any proceeding under these rules.

(2) Upon a determination by the Commission of a judge's incompetence, there shall be an immediate interim suspension, with pay, pending a final disposition by the supreme court.

(e) Disability Suspension. A judge who claims that a physical or mental disability prevents his or her assisting in the preparation of a defense in a proceeding under these rules shall be placed on interim suspension, with pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue.

26.13 Special Provisions for Cases Involving Mental or Physical Disability.

(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the Commission shall follow the same procedures that it employs with respect to discipline for misconduct.

(b) Representation by Counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the

supreme court shall appoint an attorney to represent him or her.

(c) Medical Privilege.

(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce his or her medical records.

(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the Commission. The report of the medical practitioner shall be furnished to the Commission and the judge.

26.14 Involuntary Retirement.

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the supreme court. If attempts to convince a judge to retire voluntarily fail, then special counsel shall be appointed to file a formal complaint, and the Commission shall hold a hearing and submit a report with recommendations to the supreme court.

(b) Effect of Involuntary Retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the court.

(Added June 1, 1979, effective June 1, 1979.)

(Amended December 5, 1979, effective December 5, 1979.)

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the)
COMMISSION ON JUDICIAL DISCIPLINE)
_____)

ORDER OF APPOINTMENT

Pursuant to Rule 26 of the Rules of this Court,

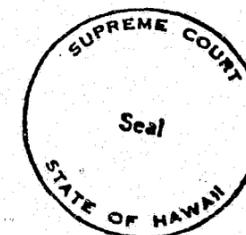
IT IS HEREBY ORDERED that:

1. The REVEREND CHARLES T. CRANE and J.W.A. BUYERS be reappointed to the Commission on Judicial Discipline for terms effective June 1, 1980, and expiring May 31, 1983;
2. JACKIE MAHI ERICKSON be reappointed to the Commission on Judicial Discipline for a term effective June 1, 1981, and expiring May 31, 1984;
3. MAN KWONG AU, replacing Wilson P. Cannon, Jr., deceased, be appointed to the Commission on Judicial Discipline for a term effective July 1, 1981, and expiring June 30, 1984.

DATED: Honolulu, Hawaii, June 25, 1981.

BY THE COURT:

William A. Richardson
Chief Justice



FILED
1981 JUN 25 AM 9:44
Dawn M. Phillips
CLERK SUPREME COURT

END