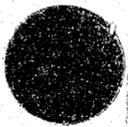


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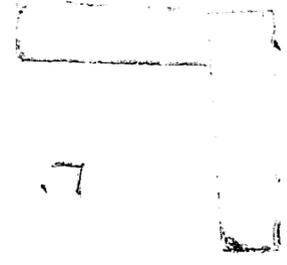


ANNUAL REPORT
OF THE
MASSACHUSETTS COMMISSION ON JUDICIAL CONDUCT
1980

86141

14 Beacon Street
Suite 102
Boston, Massachusetts
02108

(617) 725-8050



To the Honorable Chief Justice, and Justices of the
Supreme Judicial Court, and the Honorable Senators
and Representatives of the General Court

In accordance with the requirements of Massachusetts
General Law c. 211C §4, the members of the Commission
on Judicial Conduct respectfully submit for your
consideration the Commission's annual report.

The time period covered by this report extends
from November 1, 1979, through December 31, 1980.

Respectfully submitted,

Florence R. Rubin, Chairman
John M. Harrington, Jr., Esq.,
Vice Chairman
Margaret Dever
Archie C. Epps III
Colin Gillis, Esq.
Honorable Sanford Keedy
Honorable Andrew Linscott
Samuel Marsella, Esq.
Honorable Elbert Tuttle

March 1, 1981
Boston, Massachusetts

U.S. Department of Justice
National Institute of Justice

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INTRODUCTION

All fifty states and the District of Columbia have established judicial conduct commissions to help enforce the codes of conduct which govern the behavior of judges both on and off the bench. As a forum for citizens with complaints against judges, the judicial conduct commission protects the integrity of the judicial process and promotes public confidence in the courts. Judicial conduct commissions deal with complaints about the ethical conduct and the mental or physical disability of judges. Such commissions do not act as appellate courts, nor do they make judgments as to the correctness of judicial decisions.

The Massachusetts Commission on Judicial Conduct (Commission) was created by the court reorganization act of 1978. It replaced the Committee on Judicial Responsibility, which had been established by the Supreme Judicial Court in February 1977. The Commission is authorized to accept complaints only about state judges.

This document is the Commission's second annual report.

THE COMMISSION'S ROLE

The Commission is authorized to investigate complaints of judicial misconduct and incapacity, and where warranted, to make recommendations for appropriate dispositions to the Supreme Judicial Court. Upon the complaint of any person, including a Commission member, the Commission must investigate the action of any judge whose wilful misconduct in office, wilful or persistent failure to perform his duties, habitual intemperance or other conduct detrimental to the administration of justice, either brings the judicial office into disrepute or violates the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09).

The Commission may not initiate an investigation without a written, signed complaint. Even with a complaint, the Commission may not deal with matters that are more than one year old unless the Commission finds good cause to do so, or unless there is an alleged pattern of misconduct.

THE COMPLAINT PROCESS

Complaints alleging judicial misconduct must be in writing, be signed under the pains and penalties of perjury, and must contain specific charges to which a judge can reasonably make a response. Commission staff is available to assist complainants in reducing grievances to writing.

The Executive Secretary screens the complaints as they are received in the Commission office. The usual practice is to send a copy of each complaint to the judge in question within twenty-one days of its receipt by the Commission. If, however, a complaint appears to be frivolous, unfounded, or outside the authority of the Commission, a copy is sent to each Commission member with a recommendation for immediate dismissal. If no Commission member disagrees with the recommendation, the judge is not notified of the complaint until after it has been formally dismissed at the next meeting of the Commission.

The judge has thirty days during which he may respond in writing to a complaint sent to him by the Commission. Upon receipt of the judge's response, or after the expiration of the thirty-day period, the Commission reviews the allegations contained in the complaint and the judge's response, if any. The Commission may then vote to order an investigation. The investigation would be conducted by the Commission staff or by special counsel appointed by the Supreme Judicial Court at the Commission's request. After the investigation, the Commission may vote to file formal charges against the judge, to which the judge has twenty days to respond. A hearing may then be conducted before a panel of Commission members or before a hearing officer appointed by the Supreme Judicial Court. The Commission may designate the Executive Secretary or special counsel to present the case in support of the charges.

At any appropriate time during the process the Commission may vote to dismiss a complaint, informally resolve a complaint, or take such other steps as it deems appropriate. Most complaints are disposed of before the hearing stage.

For complaints where formal proceedings have been instituted and a hearing held, the Commission has the authority to make recommendations to the Supreme Judicial Court for disciplinary sanctions such as reprimand, censure, disbarment, retirement, or removal from office.

In dealing with complaints the Commission has the power to subpoena witnesses and documents, order depositions to be taken, administer oaths and affirmations, and compel testimony. It has such additional powers as are necessary and proper to obtain information and to conduct hearings. The Commission maintains a liberal discovery policy whereby participants in a Commission proceeding may depose witnesses, and obtain appropriate information in the possession of other participants.

All Commission proceedings are confidential. While the Commission may issue public statements to explain its responsibilities and the way it conducts business, it may not identify anyone involved in a Commission proceeding. Accordingly, the Commission's policy is to refrain from commenting on complaints even as to whether or not the Commission has received or is investigating a complaint against a particular judge.

SOURCES OF COMPLAINTS

The majority of complaints came from dissatisfied litigants or their relatives. In many instances, the complainants proceeded in court without the benefit of counsel. Most matters presented to the Commission by such litigants or their relatives raised issues of findings of fact, rulings of law, or discretionary acts not properly reviewable by the Commission in the absence of a showing of improper motivation or a pattern of illegal conduct.

The Board of Bar Overseers (Board) routinely refers to the Commission complaints arising out of the practice of law by judges prior to their acceptance of full-time judicial appointments. Unless such matters raise serious questions as to the present integrity and competency of judges, the Commission defers to the Board in such matters. To date, all matters referred to the Commission by the Board have been referred back to the Board for disposition.

Relatively few matters have been brought to the Commission's attention by individual lawyers or the organized bar.

NATURE OF COMMISSION MATTERS

Many of the matters considered by the Commission arose out of small claims, domestic disputes, criminal misdemeanor prosecutions, and civil litigation such as landlord-tenant disputes, contractual disputes and the like. Such matters were important to the complainants, and often involved personal and emotional issues.

In this context, many of the matters presented to the Commission involved dissatisfaction or disagreement with a judge's rulings of law, findings of fact, or exercise of discretion - matters not properly reviewable by the Commission in the absence of an underlying allegation of misconduct or incapacity.

Accordingly, 95.9 per cent of the matters disposed of during this reporting period were dismissed by the Commission.

STATUS OF THE COMMISSION'S DOCKET

The chart indicates the activity of the Commission from November 1, 1979, to December 31, 1980.

Matters pending on November 1, 1979	14
Matters filed	64
Dismissed	71
Withdrawn	1
Informally adjusted	1
Recommendations to the Supreme Judicial Court	1
Matters pending on December 31, 1980	4

The Commission notes that considerable staff time was devoted to responding to inquiries which did not result in the filing of complaints. Such inquiries included instances where information, explanations, and complaint forms were provided, but callers elected not to file complaints; instances where inquirers were referred to other agencies for information or action; and instances where callers or visitors were informed that their complaints did not fall within the authority of the Commission.

MEMBERSHIP

The Commission is comprised of nine members serving three-year staggered terms. Massachusetts General Law c. 211C §1 requires that three members be lay persons, three be lawyers, and three be judges. The three lay persons are appointed by the Governor, the three lawyer members are appointed by the Chief Administrative Justice of the Trial Court, and the three judicial members are appointed by the Justices of the Supreme Judicial Court. The Commission annually elects one of its members to serve as Chairman, and one to serve as Vice Chairman.

The membership of the Commission during the time period covered by this report follows:

Carolyn Dik
Served until February 21, 1980

Margaret Dever
Began serving February 21, 1980

Archie C. Epps III
Honorable Edith W. Fine
Served until December 3, 1979

Richard D. Gelinias, Esq.
Served until February 1, 1980

Colin Gillis, Esq.
Began serving February 1, 1980

John M. Harrington, Jr., Esq.

Honorable Sanford Keedy
Honorable Andrew Linscott
Began serving December 3, 1979

Allan G. Rodgers, Esq., Chairman

Florence R. Rubin, Vice Chairman

Honorable Elbert Tuttle

BUDGET

The Commission is an independent agency funded through a line item in the budget of the Supreme Judicial Court. The Commission received a fiscal year 1981 appropriation of \$73,000.

STAFF

Stephen M. Limon, Esq. served as the Commission's Executive Secretary until March 28, 1980, and as its Acting Executive Secretary until June 13, 1980. Anthony C. Sicuso, Esq. was appointed to the statutory position of Executive Secretary, and began serving on June 16, 1980. Ingrid S. McLean continued in the position of Executive Assistant.

OFFICE LOCATION

For more than a year the Commission occupied office space at 44 School Street, Boston, Massachusetts. In November, 1980 the Commission moved to Suite 102 at 14 Beacon Street in Boston.

OPERATING RULES

Since January 16, 1979, the Commission has utilized interim rules approved by the Supreme Judicial Court, and modeled after those of its predecessor, the Committee on Judicial Responsibility. The interim rules have undergone a continuous process of review and analysis by the Commission, its staff, and attorneys from the Office of the Attorney General. By the end of December, 1980, a draft revision was almost ready to be published in Massachusetts Lawyers Weekly, and to be sent for comment to the Chief Justices of the Massachusetts court system. The proposed revision was also to be distributed to judges who would be invited to attend a series of seminars sponsored by the Commission.

The revised rules will be submitted to the Supreme Judicial Court for approval early in 1981.

MEETINGS

The Commission held eighteen meetings during the course of this reporting period. All meetings prior to November 14, 1980, were held at the offices of the Commission at 44 School Street, Boston. Meetings were held thereafter at the new Commission offices at 14 Beacon Street, Boston.

RECOMMENDATIONS

The extensive review of the Commission's interim Operating Rules demonstrated the need to amend chapter 211C of the Massachusetts General Laws. As a result, the Commission decided to support a bill (H5591), which was filed for the 1981 legislative session, and which proposed to amend section 2 of chapter 211C.

For the sake of national uniformity, that bill revised the types of judicial behavior within the Commission's authority to conform to the wording suggested by the American Bar Association. It also specifically provided for the informal adjustment of complaints, an established practice which the Commission believes should be addressed in the statute as well as in its Operating Rules.

The bill also removed the requirement that complaints initiated by the Commission or its membership be signed under the pains and penalties of perjury. To require Commission members to sign under oath is a needless formality in light of the reliability and specificity requirement cited in McKenney v. Commission on Judicial Conduct (1979) 388 N.E. 2d 666, 1979 Mass. Adv. Sh. 1006.

The bill eliminates a restriction that prevents prompt investigation by the Commission. The present statute forbids the Commission from initiating any investigation until after the judge in question has been given notice of the complaint and a thirty-day period in which to submit a response. That thirty-day waiting period adversely affects the Commission's ability to investigate allegations involving corruption or the actions of a judge where prompt investigation may be required to protect the public interest. No other judicial conduct commission has such a restriction on its investigatory powers.

The bill provides for a public hearing once formal charges have been issued (a closed hearing is presently required); and it allows the Commission to carry out reasonable exceptions to confidentiality subject to the approval of the Supreme Judicial Court. Such provisions are in line with standards endorsed by the American Bar Association to protect both the judge's reputation and the integrity of the Commission's proceedings from the effects of rumor and speculation.

The Commission filed a bill for the 1981 legislative session (H173) to amend chapter 211C, section 3 of the Massachusetts General Laws. That bill allows the Commission to set the salary of the Executive Secretary. The Commission considers the present language of section 3, which sets the salary of the Executive Secretary at \$25,000 per year, to be unduly restrictive.

END