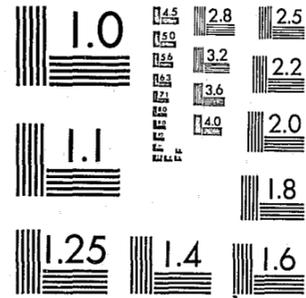


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

1/03/83

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ANNUAL REPORT
OF THE
COMMISSION ON JUDICIAL CONDUCT

U.S. Department of Justice
National Institute of Justice

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JANUARY 1980

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

NCJRS

SEP 8 1979

ACQUISITIONS

In accordance with the requirements of G.L. c. 211C §4, the members of the Commission on Judicial Conduct (Commission) respectfully submit for your consideration their first annual report.

The time period covered by this report extends from November 13, 1978, the date of qualification of the members of the Commission, to October 31, 1979.

INTRODUCTION

That judicial conduct, accountability, and discipline should be treated as a subject worthy of discussion and action is a very recent concept in the United States. The first permanent judicial discipline commission in a state court system was created in California merely twenty years ago. Today only the State of Washington does not yet have a judicial discipline agency. On the federal level, several proposals are presently pending before the Congress, which would establish machinery to deal with judicial disciplinary and disability matters.

In February, 1977, the Supreme Judicial Court created the Committee on Judicial Responsibility (Committee) via court rule (Supreme Judicial Court Rule 3:17). Nine members were appointed, operating rules were promulgated, and the Committee conducted business for slightly more than two and a half years.

By Section 114 of Chapter 478 of the Acts of 1978 the General Court enacted G.L. c. 211C, which established the Commission on Judicial Conduct. The mandate of the statutory Commission was essentially the same as that of the Committee: namely, to investigate complaints of judicial misconduct and incapacity, and where warranted to recommend appropriate dispositions to the Supreme Judicial Court.

MEMBERSHIP OF THE COMMISSION

G.L. c. 211C was patterned to a large extent on the structure and procedures of the Committee. Membership, for example, continued to be broken down into three categories, with three members in each category. While the nine Committee members were all appointed by the Justices of the Supreme Judicial Court, the three judicial members of the Commission are appointed by the Justices of the Supreme Judicial Court, the three attorney

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members are appointed by the Chief Administrative Justice of the Trial Court, and the three lay members are appointed by the Governor. Three year terms are staggered such that each of the three appointing authorities appoints one new member every year.

The nine Committee members received the initial Commission appointments of the three appointing authorities. Thus, a large degree of continuity was maintained, several differences in operating procedures notwithstanding.

The membership of the Commission at the end of the time period covered by this report follows: ¹✓

<u>Lay Members</u>	<u>Term</u>
Carolyn Dik	October 31, 1979
Archie C. Epps, III	October 31, 1980
Florence R. Rubin (Vice-Chairman)	October 31, 1981

<u>Lawyer Members</u>	<u>Term</u>
Richard D. Gelinis	October 16, 1979
Allan G. Rodgers (Chairman)	October 16, 1980
John M. Harrington, Jr.	October 16, 1981

<u>Judicial Members</u>	<u>Term</u>
Edith W. Fine (Superior Court)	November 13, 1979
Sanford Keedy (Probate Court)	November 13, 1980
Elbert Tuttle (District Court)	November 13, 1981

FUNDING

The Commission is funded through a line item in the budget of the Supreme Judicial Court. The Commission sought and received a fiscal year 1980 state appropriation of \$74,872. Initial operating costs of the Commission prior to the beginning of fiscal year 1980 were covered for the most part by funds remaining in the fiscal year 1979 account of the Committee, and the remaining overhead expenses were borne by the Administrative Office of the Supreme Judicial Court.

¹✓ Members Dik, Gelinis, and Fine will serve as carry-overs until such time as they are reappointed and qualified, or their successors are appointed and qualified.

STAFF

John F. Burke, Administrative Assistant to the Supreme Judicial Court, served as part-time Executive Secretary to the Commission without compensation from its inception until March 5, 1979. During that period of time clerical and secretarial services were provided by employees in Mr. Burke's office, also on a part-time basis without compensation. In March the Commission appointed Stephen M. Limon to the statutory position of full-time Executive Secretary, and in April Ingrid S. McLean was appointed to the full-time position of Administrative Secretary.

OFFICE LOCATION

The Executive Secretary and Administrative Secretary originally shared office space with the Administrative Assistant of the Supreme Judicial Court and his staff. This arrangement proved to be unsatisfactory for the following reasons: overcrowding in the Administrative Offices of the Supreme Judicial Court, difficulty in ensuring the statutorily required confidentiality of the business of the Commission, and difficulty in maintaining an appearance of impartiality and independence. Accordingly, space was sought in other public buildings over a period of several months, but without success.

After a thorough search the Commission located adequate private office space at 44 School Street, secured the requisite approvals, and presently occupies Suite 505 at that address.

OPERATING RULES

In December, 1978, the Commission reviewed the Operating Rules of the Committee with a view toward drafting them to conform to the mandate of G.L. c. 211C. Deputy Administrative Assistant to the Supreme Judicial Court Robert S. Bloom prepared the draft, which was submitted to the Rules Committee of the Supreme Judicial Court in early January for approval as interim rules. The Supreme Judicial Court approved those rules on January 16, 1979. It is the intention of the Commission to review its interim rules, to provide an opportunity for public comment, and to submit them with amendments, if warranted, to the Supreme Judicial Court for approval as permanent rules.

MEETINGS

The Commission met for the first time on December 4, 1978. Subsequently, during the course of this reporting period the

Commission met on fifteen occasions. All meetings prior to August 15, 1979, were conducted in the Consultation Room or the Lawyers Waiting Room of the Supreme Judicial Court. Thereafter, meetings were held at the offices of the Commission at 44 School Street in Boston.

SCREENING OF COMPLAINTS

G.L. c. 211C §2 requires a copy of a complaint and any other documents relating to a complaint to be sent to the judge complained against within twenty-one days of its receipt by the Commission. Failure to do so constitutes an automatic dismissal of the complaint. Wishing to preclude the possibility of an erroneous automatic dismissal during the few months prior to the appointment of its full-time staff, the Commission adopted the policy of automatically sending all complaints and materials to the judges complained against immediately upon their receipt. This meant that a number of judges felt obliged to respond to complaints that were obviously frivolous or unfounded.

At its June meeting the Commission adopted the following screening procedure in order to alleviate this problem:

1. The Executive Secretary reviews a complaint upon its receipt;
2. A copy of any complaint, which on its face appears to be frivolous, unfounded, or outside the jurisdiction of the Commission, is forwarded by the Executive Secretary to each member of the Commission, accompanied by a recommendation for dismissal and a return day falling within the twenty-one day notice period;
3. A communication from any member of the Commission, on or before the return day, expressing disagreement with the recommendation to dismiss, results in the immediate mailing to the judge required by statute. If no such communication is received, the complaint is placed on the docket of the next meeting for formal dismissal, and the judge is not notified of the existence of the complaint until after it has been dismissed.

STATUS OF THE COMMISSION'S DOCKET

Chart I indicates the activity of the Commission from its establishment through October 31, 1979.

CHART I

Matters Filed	79
Dismissed	64
Withdrawn	0
Informally Adjusted	0
Recommendation to Supreme Judicial Court	0
Disposed of by Other Means	1
Matters Pending as of November 1, 1979	14

Chart II indicates the status of the fourteen matters pending as of October 31, 1979.

CHART II

Awaiting Initial Screening	0
Awaiting Commission Consideration	10
Under Investigation	4 ²

It should be noted that numerous inquiries made to the Commission staff did not result in the filing of complaints. These included instances wherein information, explanations, and complaint forms were provided, but the complainants elected not to file complaints; instances wherein complainants were referred to other agencies for information or action; and instances wherein callers or visitors were informed that their complaints came neither within the purview of the Commission, nor within the jurisdiction of any other agency.

An analysis of the inquiries between June 1, 1979, and October 31, 1979, reveals the following: the Commission received between two and three inquiries for every one complaint form which was distributed; and only one out of every two forms which were distributed ultimately was filed as a complaint.

² The four complaints under investigation are against three judges. Three of these matters, involving two of the judges, were referred to special counsel who were appointed pursuant to G.L. c. 211C §2, and Interim Operating Rules 2(g) and 5(c). Of the judges involved in the seventy-nine complaints filed during this reporting period, only the three judges whose cases are under investigation chose to retain legal counsel.

Chart II indicates that no complaints await initial screening, and that only ten matters await Commission consideration. Thus, the Commission is current in conducting its business. Complaints are screened at the staff level within a day of their receipt (see "Screening of Complaints" above). If after screening the decision is not to recommend dismissal, a copy of the complaint immediately is sent to the complained of judge. Delay of approximately a month may occur at this juncture, because G.L. c. 211C provides that "the judge shall be given thirty days notice of the complaint and shall within such time have the right to respond," and that "no investigation shall be undertaken by said commission unless and until the judge has responded in writing or failed to do so."

Nevertheless, seventy-nine percent of all Commission matters were disposed of within approximately two months of filing, and fifty-one percent were disposed of within approximately one month of filing.³ Predictably, implementation of the screening process on June 13, 1979, speeded the processing of cases considerably.

SOURCES OF COMPLAINTS

The vast majority of complaints came from dissatisfied litigants or their relatives. In many instances, these complainants proceeded in court without the benefit of counsel. Most matters presented to the Commission by such complainants 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) occasionally referred to the Commission complaints arising out of the practice of law by judges. It is the policy of the Commission that unless such matters raise serious questions as to the integrity and competency of judges, the Commission will defer to the Board in such matters. All matters referred to the Commission by the Board during this reporting period were referred back to the Board for its consideration and action.

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

A small percentage of the Commission's caseload came to its attention from observers of court proceedings, and from news media reports which resulted in Commission-initiated complaints.

³ Delays in several of those cases, which were not disposed of within two months, were caused in part because the judges involved chose to challenge certain provisions of G.L. c. 211C in the appellate courts.

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 neighborhood disputes, landlord-tenant disputes, contractual disputes and the like. However insignificant these matters might have seemed to others, they were extremely 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 judges' rulings of law, findings of fact or exercises of discretion - matters not properly reviewable by the Commission in the absence of an underlying allegation of misconduct or incapacity.

In addition, inquiry into some complaints indicated that the root of the complainants dissatisfaction rested with the performance of his or her lawyer, or a failure of the lawyer to explain to the complainant the nature and limitations of the legal action taken on his or her behalf.

Accordingly, nearly 94 percent of the matters disposed of during this reporting period were dismissed by the Commission.

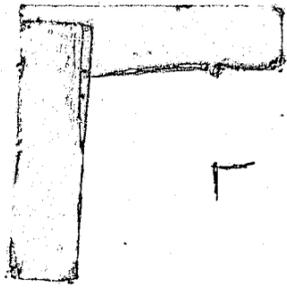
RECOMMENDATIONS

As indicated in the section of this report entitled "Operating Rules," the Commission intends to review its interim Operating Rules with the view toward amending them as necessary and appropriate. The process established by the Commission to effect this review may well give rise to evidence of the need to suggest amendments to G.L. c. 211C. The Commission therefore, declines to offer specific recommendations at this time, while reserving the right to do so in the future.

Respectfully submitted on behalf of the Commission,

Allan G. Rodgers
Allan G. Rodgers, Chairman

Florence R. Rubin
Florence R. Rubin, Vice-Chairman



END