

Office of the  
Legislative Fiscal Analyst

## **FY 2005 Budget Recommendations**

Joint Appropriations Subcommittee for  
Capital Facilities and Administrative Services

Utah Department of Administrative Services  
**Judicial Conduct Commission**

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**1.0 Summary: Judicial Conduct Commission**

The Judicial Conduct Commission is a quasi-independent agency that investigates and resolves complaints against Utah judges.

The Commission is comprised of 11 members who represent the legal profession, the Legislature, the Judicial Branch and private citizens.

<b>Judicial Conduct Commission</b>			
<b>Membership</b>			
<i>Legislators</i>	<i>Judges</i>	<i>Attorneys</i>	<i>Public</i>
Sen. Gene Davis	Hon. Darwin C. Hansen	Ruth Lybbert, Chair	Joe Judd
Sen. Michael Waddoups	Hon. Russell W. Bench	Ronald Russell	Flora Ogan
Rep. Katherine M. Bryson			Rod Orton
Rep. Neal Hendrickson			

A Constitutional Amendment passed in 1984 established the Commission as part of Article VIII, Section 13 of the Utah Constitution. Commission composition is defined in Utah Code Section 78-8-102.

	<b>Analyst FY 2005 Base</b>	<b>Analyst FY 2005 Changes</b>	<b>Analyst FY 2005 Total</b>
<b>Financing</b>			
General Fund	220,300		220,300
Beginning Nonlapsing	27,200		27,200
Closing Nonlapsing	(17,700)		(17,700)
<b>Total</b>	<u>\$229,800</u>	<u>\$0</u>	<u>\$229,800</u>
<b>Programs</b>			
Judicial Conduct Commission	229,800		229,800
<b>Total</b>	<u>\$229,800</u>	<u>\$0</u>	<u>\$229,800</u>
<b>FTE/Other</b>		2	2
Total FTE			

## **2.0 Issues:**

### **2.1 Performance Audit Calls for Consistency**

In December of 2003 the Legislative Auditor General released a follow up audit to the 2002 JCC Audit that called for more accountability. The 2003 Audit focused on standardizing practices and consistent processes. Section 3.2 provides further information about the Audit..

### **2.2 JCC Non-Lapsing Authority**

The bulk of the JCC budget goes to salary and benefits for the executive director and two part-time employees. However, the Commission routinely hires outside investigators to assist with peaks in caseload. Over the years this cost has been funded through non-lapsing balances. The Analyst recommends that these expenses continue to be handled within existing funds at this point, but should be monitored to ensure that the JCC can properly function in the future if caseload increases.

### 3.0 Programs: Judicial Conduct Commission

	2003	2004	2005	Est/Analyst
	Actual	Estimated*	Analyst	Difference
<b>Financing</b>				
General Fund	218,500	220,300	220,300	
General Fund, One-time		800		(800)
Beginning Nonlapsing	13,400	34,200	27,200	(7,000)
Closing Nonlapsing	(34,200)	(27,200)	(17,700)	9,500
<b>Total</b>	<b>\$197,700</b>	<b>\$228,100</b>	<b>\$229,800</b>	<b>\$1,700</b>
<b>Expenditures</b>				
Personal Services	144,700	171,000	170,500	(500)
In-State Travel	7,600	8,000	8,000	
Out of State Travel	6,000	2,500	6,000	3,500
Current Expense	35,800	37,800	38,500	700
DP Current Expense	3,600	8,800	6,800	(2,000)
<b>Total</b>	<b>\$197,700</b>	<b>\$228,100</b>	<b>\$229,800</b>	<b>\$1,700</b>
<b>FTE/Other</b>				
Total FTE	2	2	2	0

\*Non-state funds as estimated by agency

Judicial Conduct Commission administration consists of a Director and a part time investigator to resolve complaints against Utah judges. The staff manages claims, assigns inspectors, and prosecutes judges when necessary. The Commission dismisses approximately 85 percent of all claims, ten percent are resolved through formal correspondence and five percent require a formal hearing. Current expense in this budget is used to hire outside investigators and temporary employees based on case load. Since caseload varies from year to year, the Analyst recommends the following intent Language:

*It is the intent of the Legislature that funds for the Judicial Conduct Commission not lapse and that those funds shall be used to hire temporary contractors on an as needed basis.*

### 3.1 Annual Report

The Judicial Conduct Commission is required to file an annual report to the Legislature. The report follows the 4.0 section of this document.

### 3.2 JCC Performance Audit

In October of 2002 the Legislative Auditor General (LAG) released a report<sup>1</sup> calling for a more open process in sanctioning judges. The report found that the Utah JCC process is more confidential than those found in other states even though it is similar to other state judicial oversight panels in cost, operation and structure. The Auditor General recommendation included clarifying statute to address issues of confidentiality and to provide official auditing access to the confidential work papers of the JCC.

In December of 2003 the LAG issued a performance audit<sup>2</sup> expanding on the themes of the 2002 review. While still calling for more openness, the Audit recommended that policies and procedures should be more consistent, standard and fair. The Auditors also called for publication of sanctions in a manner similar to the publication of other Supreme Court Findings. A Digest of the findings is attached to this report on page 11 and the entire report can be found in the FY 2005 Budget Recommendations behind tab 8. Electronic access may be found at the URL shown in the footnotes below.

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<sup>1</sup> Legislative Auditor General (October 2002). *A Review of the Judicial Conduct Commission, Report Number 2002-06*. Salt Lake City, Utah: Office of the Legislative Auditor General. [http://www.le.state.ut.us/audit/02\\_06rpt.pdf](http://www.le.state.ut.us/audit/02_06rpt.pdf)

<sup>2</sup> Osterstock, Tim and Stahla, Maria (December 2003). *A Performance Audit of the Judicial Conduct Commission. Report Number 2003-10*. Salt Lake City, Utah: Office of the Legislative Auditor General [http://www.le.state.ut.us/audit/03\\_10rpt.pdf](http://www.le.state.ut.us/audit/03_10rpt.pdf)

**4.0 Additional Information: Judicial Conduct Commission**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>Financing</b>	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Estimated*</b>	<b>Analyst</b>
General Fund	224,800	227,600	218,500	220,300	220,300
General Fund, One-time				800	
Beginning Nonlapsing	39,500	19,700	13,400	34,200	27,200
Closing Nonlapsing	(19,700)	(13,400)	(34,200)	(27,200)	(17,700)
<b>Total</b>	<b>\$244,600</b>	<b>\$233,900</b>	<b>\$197,700</b>	<b>\$228,100</b>	<b>\$229,800</b>
<b>Programs</b>					
Judicial Conduct Commission	244,600	233,900	197,700	228,100	229,800
<b>Total</b>	<b>\$244,600</b>	<b>\$233,900</b>	<b>\$197,700</b>	<b>\$228,100</b>	<b>\$229,800</b>
<b>Expenditures</b>					
Personal Services	187,200	184,000	144,700	171,000	170,500
In-State Travel	600	2,600	7,600	8,000	8,000
Out of State Travel	6,700	1,700	6,000	2,500	6,000
Current Expense	45,900	42,200	35,800	37,800	38,500
DP Current Expense	4,200	3,400	3,600	8,800	6,800
<b>Total</b>	<b>\$244,600</b>	<b>\$233,900</b>	<b>\$197,700</b>	<b>\$228,100</b>	<b>\$229,800</b>
<b>FTE/Other</b>					
Total FTE	2	2	2	2	2

\*Non-state funds as estimated by agency.

# UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2003

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## Creation and Authority of the Judicial Conduct Commission



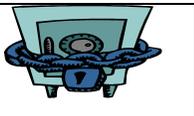
Although it had existed previously as a legislatively created body, Utah's Judicial Conduct Commission (JCC) was constitutionally established in 1984. See Constitution of Utah, Article VIII, Section 13. The constitution authorizes the Legislature to statutorily establish the composition and procedures of the JCC, and those provisions are found in Utah Code, Title 78, Chapter 8.

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 must review 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.

## Confidentiality of JCC Records and Proceedings



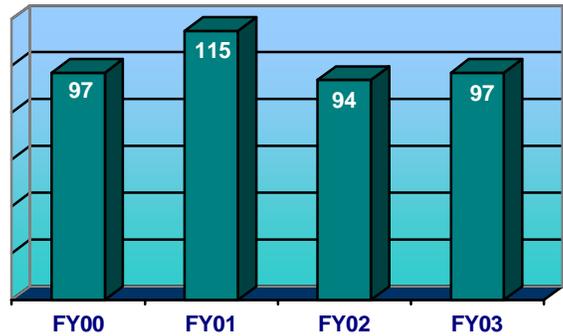
Except in certain limited circumstances specified by statute, all complaints, papers and testimony received or maintained by the JCC, and the record of any confidential hearings conducted by the JCC, are confidential, and cannot be disclosed.

## Number of Complaints Received and Resolved



The JCC receives and investigates about 100 complaints each year. Of that total, approximately 80% are dismissed at the conclusion of the preliminary investigation, either because the basis of the complaint is an appealable issue beyond the JCC's jurisdiction, or because the preliminary investigation fails to produce sufficient facts upon which to warrant additional proceedings.

### Complaints Received Per Year



Of the 97 complaints received in FY 2003, 76 have been dismissed to date, 19 are the subject of ongoing investigations, one resulted in the issuance of an informal order of reprimand, and one resulted in a recommendation for removal from office.

### Complaints Received in FY 2003

Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Appellate	12	0	0
District	70	65	38
Juvenile	25	8	5
Justice Court	120	21	17
Pro Tempore	165	3	3

**Summary of Sanctions Implemented by the Utah Supreme Court in FY 2003**



**Formal Order of Reprimand.** Washington County Justice Court Judge Richard M. Dobson's daughter had been placed on house arrest by another judge. Law enforcement officers observed Judge Dobson's daughter at a location which they believed to be in violation of the house arrest order, and detained her. The daughter's fiancé, who was also present, called Judge Dobson from the scene. Via cell phone, Judge Dobson inappropriately raised his voice and told the officers that he had "trusted the police and backed them 100 percent," but that he was "not so sure anymore." He also told the officers that he was "going whole hog on this one," and that he was going to "come after [them] with the full weight of the law." The following day, Judge Dobson publicly apologized to the officers. It was determined that Judge Dobson's actions violated Code of Judicial Conduct Canon 4A, which requires judges to conduct their extra-judicial activities so that they do not cast reasonable doubt on the capacity to act impartially, and so that such activities do not demean the judicial office.

**Informal Order of Reprimand.** A small claims judge pro tempore maintained a private law practice in which he represented debtors in bankruptcy proceedings. The judge continued a small claims trial for a period of one month. During that month, the judge filed a bankruptcy proceeding on behalf of one of the defendants, then filed a Notice of Bankruptcy in the small claims case. It was determined that the judge's actions violated: Code of Judicial Conduct Canon 1, which requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved; and Code of Judicial Conduct Canon 3E(1), which requires judges to enter disqualifications in proceedings in which their impartiality might reasonably be questioned.

**Informal Order of Reprimand.** A justice court judge witnessed a dog running at large. He instituted criminal proceedings against the dog's owner without an indictment, information or citation. When the defendant filed a motion seeking to disqualify the judge, the judge neither disqualified nor referred the request to another judge for a determination, in violation of the appropriate rule of procedure. It was determined that the judge's actions violated: Code of Judicial Conduct Canon 3B(2), which requires judges to apply the law; and Code of Judicial Conduct Canon 3E(1), which requires judges to enter disqualifications in proceedings in which their impartiality might reasonably be questioned.

**Informal Order of Reprimand.** A district judge engaged in personal communications, outside of the courtroom, with two women who had previously appeared before him. It was determined that the judge's actions violated: Code of Judicial Conduct Canon 2, which requires judges to avoid the appearance of impropriety in all activities; and Code of Judicial Conduct Canon 4A, which requires judges to conduct their extra-judicial activities so that they do not exploit the judicial position.

**Informal Order of Reprimand.** A justice court judge, using his government owned computer, accessed adult pornography sites on four different days during a two week period. Although the judge's activities were discovered within a few weeks, no report was made to the JCC for two and one-half years. During that time, the judge had not again used his government owned computer to access such sites. It was determined that the judge's actions violated Code of Judicial Conduct Canon 1, which requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved.

**Informal Order of Reprimand.** A district judge was faced with an attorney who repeatedly objected to going forward in a criminal hearing. The judge told the attorney to stop wasting the court's time. When the attorney refused to proceed, the judge had him taken into custody. In chambers, the judge told the attorney that he had "had a gutful" of the attorney, that the attorney was being "a hard-head" and was "acting like an idiot," and that the attorney's "attitude suck[ed]." It was determined that the judge's actions violated Code of Judicial Conduct Canon 3B(4), which requires judges to be patient, dignified and courteous to persons who appear before them.

**JCC Membership And Staff**



**JCC Members**

- |                       |                       |
|-----------------------|-----------------------|
| Ruth Lybbert, Chair   | Rod Orton, Vice-Chair |
| Rep. Katherine Bryson | Sen. Gene Davis       |
| Rep. Neal Hendrickson | Sen. Michael Waddoups |
| Hon. Russell Bench    | Gayle McKeachnie      |
| Hon. Darwin Hansen    | Flora Ogan            |
| Joe Judd              |                       |

**Staff**

- Colin Winchester, Executive Director  
 Susan Hunt, Investigator  
 Charles Smalley, Contract Investigator  
 Jill Blasdel, Office Technician

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Justice Court	120	21	17
Pro Tempore	165	3	3

## Digest of A Performance Audit of the Judicial Conduct Commission

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**Article VIII, Section 13 of the Utah Constitution grants the JCC broad authority.**

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The Utah Judicial Conduct Commission (JCC), like conduct organizations in all states, plays an important role in the administration of judicial discipline by investigating and conducting confidential hearings regarding complaints against justices and judges. The JCC has another role—to help assure the public that judges are subject to appropriate, nonpartisan oversight of ethical conduct and thereby maintain public confidence in the system. The JCC is functioning but tends to do most of its discipline in private due to constitutional and statutory requirements for confidentiality. The high level of confidentiality has, in the past, lowered public and legislative confidence in JCC work. Several statute changes have been made since 2000 addressing some of the concerns that have been raised. The commission's jurisdiction extends to all 392 members of the judiciary system.

The key findings and recommendations of this report include the following:

### **Complaint Process Needs More Standardized Procedures.**

Each year the Judicial Conduct Commission (JCC) receives about 100 complaints alleging judicial misconduct. JCC staff review each complaint and determine which appear to violate the Code of Judicial Conduct. Historically, this work has been done with little guidance beyond the JCC's initial statute found in *Utah Code* 78-8. However, legislative changes and Supreme Court Decisions have helped the JCC improve its complaint review process. The current JCC director and staff are making progress in standardizing the complaint acceptance, review and presentation process. The commission and staff are also working on rules and procedures to add more structure to the process.

While all complaints are investigated to some degree, the majority of complaints filed with the Commission are dismissed for lack of evidence of judicial misconduct without notifying the judge that a complaint was filed. In 16 percent of cases, judges are asked to respond to the complaint. Based on the judges' response, the majority of those complaints are also dismissed. District court judges receive twice the

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**Chapter II - Complaint process needs more standardized procedures.**

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number of complaints of other judges. More than half of all judges have never had a complaint filed against them and only a few judges have received multiple complaints.

Although part of the purpose of judicial discipline is to reassure the public that the judiciary does not tolerate judicial misconduct, the JCC does not publicize their actions. This is in contrast to some other states which provide extensive information to the public. In our opinion, this reduces JCC's effectiveness.

### Recommendations

1. *We recommend that the JCC and staff set standard parameters for investigations and put these parameters in their rules.*
2. *We recommend that the staff clearly write charging documents.*
3. *We recommend that the JCC and staff provide more informative dismissal letters to complainants.*
4. *We recommend that the JCC and staff set up a formal appeal process.*
5. *We recommend that staff insure all resolutions be entered into by a vote of the commission.*
6. *We recommend that JCC staff provide information to judges at training conferences regarding the types of complaints that the group is receiving.*
7. *We recommend that JCC staff make sanction decisions and annual reports available on their web site, update their office brochure and create a brochure for court personnel.*

**Commission Actions Should Be Fair, Consistent and Accountable.** Commissioners adjudicate complaints in confidential meetings based on investigations conducted by JCC staff. Then, by majority vote, determine whether or not there is judicial misconduct. If they determine that there is misconduct, the commissioners choose a disciplinary action called a sanction. Decisions regarding sanctions have been described by another states' supreme court as "collective judgement calls resting on an assessment of the individual facts of each case, as

measured against the Code of Judicial Conduct and prior precedents.” Of the 695 complaints received since 1997, the Commission has issued 17 formal, public censures and reprimands; 19 informal sanctions; nine informal resolutions; and dismissed 34 complaints with a letter of admonition, caution or comment to the judge. In addition, three judges resigned in the midst of an investigation.

Commission written decisions are unclear as to how the Commission determines which of the available sanctions to give. Article VIII, Section 13 of the *Utah Constitution* allows five available sanctions – reprimand, censure, suspension, removal, or involuntary retirement and *Utah Code* 78-8-107(2)(c) allows private reprimands. To ensure that commission decisions are consistent and fair it is important to provide commissioners with historical information and precedent so that they are able to make more informed decisions insuring that they are comparable to previous decisions made in Utah and in other states.

#### **Recommendations:**

- 1. We recommend that the commission prepare detailed written decisions that logically link factual findings and legal conclusions to the recommended sanction orders. Dissenting opinions should also be clearly documented.*
- 2. We recommend that the JCC and the court determine applicable standards for determining the appropriate sanction and what is meant by a “pattern” of misconduct, whether prior informal or private resolutions of complaints may be considered in subsequent proceedings, and what weight should be accorded the judge’s record.*
- 3. We recommend that the JCC and Legislature work together to establish guidelines for the use of informal reprimands.*
- 4. We recommend that JCC staff enter all complaint information into a confidential database that can be used to provide relevant information to Commissioners and to the Supreme Court when requested.*

#### **Supreme Court Has Role In Judicial Discipline**

Supreme Court review of judicial misconduct cases and imposition of discipline upon judges is required by the Utah Constitution. Prior to

2000, the Commission believed it was required to only send public reprimand orders to the Supreme Court. Many of its orders were, therefore, not forwarded to the Supreme Court for review. In our opinion, informally resolving these cases at the Commission level amounted to usurping the Supreme Court's authority to review and implement the appropriate sanction. Since May 2000, the JCC has been statutorily required to send all reprimand orders to the Supreme Court. The confidentiality of cases after the Supreme Court review depends on whether the case was resolved formally or informally by the JCC. The Supreme Court has implemented most commission orders without comment but has provided three written opinions to guide the JCC. The Supreme Court may have been hindered in performing their constitutional duty because of binding language in stipulation agreements and the lack of information provided by the JCC. These have been corrected by legislative action.

**Recommendations:**

- 1. We recommend that the Supreme Court consider treating sanctions against judges as it does its other decisions and make the information available on the web-site, in the court's official reporter, and in the regional reporter.*
- 2. We recommend that the Supreme Court, in imposing a sanction, consider articulating the factors leading to its decision, particularly if the court disagrees with the sanction recommended by the commission.*
- 3. We recommend that the JCC forward all misconduct cases to the Supreme Court so that the court may implement the appropriate sanction as required by the constitution.*
- 4. We recommend that the JCC not put anything in Settlement Stipulations that would bind the Supreme Court.*
- 5. We recommend that the JCC provide the Supreme Court with complete information on misconduct cases so that the court can fulfill their constitutional authority to implement, reject or modify the commission's recommended order.*

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