



## UTAH JUDICIAL CONDUCT COMMISSION ANNUAL REPORT FY 2018

1385 S. State St., Suite 143  
Salt Lake City, Utah 84115  
Telephone: (801) 468-0021  
[www.jcc.utah.gov](http://www.jcc.utah.gov)

### 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 2018

Of the 58 complaints received in FY 2018, 53 have been resolved and 5 are pending.

Complaints Received in FY 2018			
Judge Type	Number of Judges	Number of Complaints Received	Number of Judges Named in Complaints
Supreme Court	5	0	0
Court of Appeals	7	2	2
District	72	46	46
Juvenile	31	1	1
Justice Court	98	7	7
Pro Tempore	67	2	2
Active Senior	38	0	0
<b>Total</b>	<b>318</b>	<b>58</b>	<b>58</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

None.

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

None.

## Administrative Affairs

### Meetings

The JCC meets as needed on the third Tuesday of each month at the offices of the JCC. The JCC met ten (10) times during FY 2018.

### Administrative Rules

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

### FY18 JCC Commissioners

Neal Cox  
Mark Raymond  
Terry Welch  
James Jardine, New Chair  
Rep. Brian King, Chair / Rep. Elizabeth Weight  
Rep. Craig Hall  
Sen. Karen Mayne / Sen. Jani Iwamoto  
Sen. Lyle Hillyard  
Hon. David Mortensen  
Hon. Todd Shaughnessy  
Public Member (vacant)

### 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 2018, the legislative appropriation was \$262,200. The JCC had non-lapsing savings from FY 2017 in the amount of \$46,100. The JCC had a total available funds of \$308,968. JCC expenses for FY 2018 were \$279,351, leaving a balance of \$29,617.

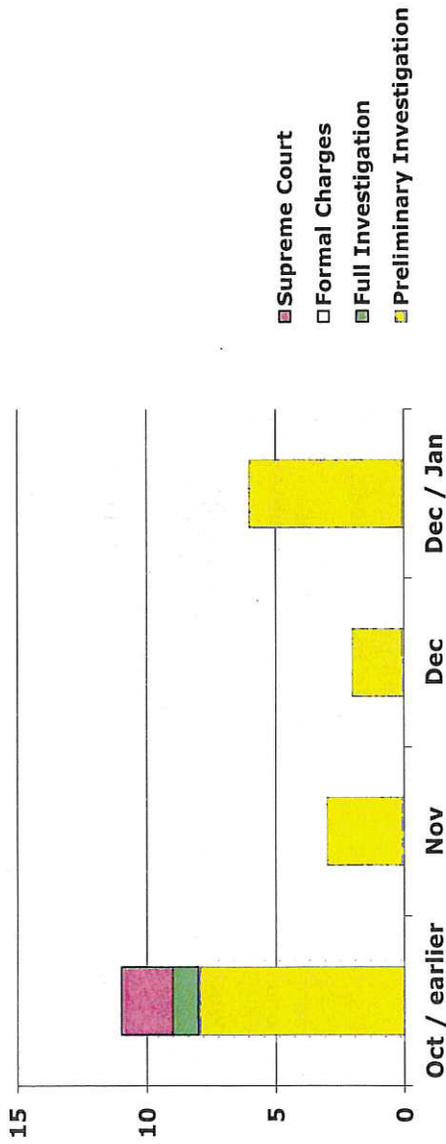
### JCC Staff

Alex G. Peterson, Executive Director  
Aimee Thoman, Investigative Counsel  
Shauna Hawley, Office Technician

**UTAH JUDICIAL CONDUCT COMMISSION – COMPLAINT RESOLUTION PROCESS**

<b>INITIAL SCREENING</b>	<b>PRELIMINARY INVESTIGATION</b>	<b>FULL INVESTIGATION</b>	<b>FORMAL PROCEEDINGS</b>	<b>SUPREME COURT</b>
<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: Anonymous complaints are submitted directly to JCC members, who review and discuss the complaint 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 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 copy of complaint and other 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 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 findings of fact, recommendation and other 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>

**PENDING CASES**



	Oct / earlier	Nov	Dec	Dec / Jan	Total
Preliminary Investigation	8	3	2	6	
Full Investigation	1	0	0	0	
Formal Charges	0	0	0	0	
Supreme Court	2	0	0	0	
<b>Total</b>	<b>11</b>	<b>3</b>	<b>2</b>	<b>6</b>	<b>22 In Process</b>

New Complaints Received Since 12/11/2018      6  
 Net Increase/Decrease Since 12/11/2018      1

Oldest Case / Goal / Previous      133 days / 180 days / 613 days  
 Ave. Case age / Goal / Previous      65 days / 90 days / 63 days

Note: S. Ct. cases are excluded

**FY 19 to date**

Total Complaints      31  
 Total DWW      4  
 Total Public Actions      1

**FY16 – None**

**FY17**

On November 4, 2016, the Utah Supreme Court reprimanded Third District Justice Court Judge Michael R. Kwan. Over the last ten years Judge Kwan was elected to various officer positions of the OCA-Asian Pacific American Advocates, a national nonprofit organization. During his most recent term as president, the organization issued articles and press releases that included comments from or attributed to Judge Kwan, issued articles or press releases criticizing candidates for political office, and Judge Kwan appeared at an organizational fundraising event. The judge's actions violated Code of Judicial Conduct Rules 1.2, 2.10, 3.1, 3.2, 3.7 and Canon 4.

On August 16, 2016, the JCC dismissed a self-reported complaint by a part-time justice court judge who had represented a juvenile in a criminal court case in violation of Utah Code Ann. § 78A-7-206(2). The JCC found that the judge's actions violated Rule 1.1, which requires judges to comply with the law. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On March 21, 2017, the JCC dismissed a complaint filed against a district court judge who made two offensive statements about an excused juror during sidebar discussions with the prosecutor and defense counsel. The JCC found that the judge's actions violated Rules 2.3(B) and 2.8 (B) of the Code of Judicial Conduct regarding Bias and Decorum. The JCC also found the comments violated Utah Standards of Judicial Professionalism and Civility Rule 11-302(2) which provides that judges will not use language that is vulgar or profane. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On March 21, 2017, the JCC dismissed a complaint filed against a justice court judge who had revoked the appointment of counsel for an indigent criminal defendant when the defendant failed to appear. The JCC found the judge's actions violated Rule 1.1, which requires judges to comply with the law affording the right to counsel if indigent until the court determines that the defendant's financial circumstance have changed. The appointment of counsel is based on indigence and cannot be conditioned on a defendant's failure to appear without just cause or used as a sanction. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On May 16, 2017, the JCC dismissed a complaint filed against a juvenile court judge who had failed to ensure notice and an adequate record of permitted ex-parte communications. The JCC found that the judge's actions violated Rule 2.9(A)(1)(b), which is an exception to the prohibition on ex-parte communications requiring notice and an adequate record is maintained. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

**FY18 – None**

**FY19 (To date)**

On 17 July 2018, the Judicial Conduct Commission dismissed a complaint with warning against a District Court Judge as to the Rule 2.8(b) violation of impatient and discourteous behavior. The Judge was impatient and not courteous to a litigant attorney and made comments that did not reflect an appropriate judicial temperament. However, the JCC

also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On September 18, 2018 the Judicial Conduct Commission dismissed a complaint with warning to a District Judge as to the Rule 2.9(A)(1)(3)(C) violations of ex parte communications by the Judge. The Judge was informed of possible jury improprieties, had conversations regarding it with a non-party and never disclosed or made a record of those conversations. Subsequently, the case was settled. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On 18 September 2018, the Judicial Conduct Commission dismissed a complaint with warning to a Juvenile Court Judge as to a Rule 1.2 violation of not promoting confidence in the Judiciary. The Judge engaged in personal communications with a party on sexual topics and intimate matters that were highly inappropriate and when made public did not promote, and in fact, undermined public confidence in the judiciary. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On September 18, 2018, the Judicial Conduct Commission determined to dismiss a complaint with warning to Justice Court Judge as to the violations of Rules 1.2 and 1.3. The Judge, identifying herself as a judge, contacted a court clerk on behalf of a friend to get information on a case. Subsequently, the Judge, again in her personal capacity, attend a court hearing on this case and identified herself as a judge to the prosecutor. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted.

On September 18, 2018, the Judicial Conduct Commission dismissed a complaint with warning to a Justice Court Judge as to violations of Rules 1.1, 1.2, 2.5(A), and UCA §78A-11-108. Court personnel observed the judge not making decisions, falling asleep on the bench, behaving groggily, failing to maintain her government provided email, discussing cases with a retired judge and overusing prescribed medication. The Judge agreed to a mentorship and oversight program. However, the JCC also found that the misconduct was troubling but relatively minor misbehavior for which no public sanction was warranted upon successful program completion.

On December 28, 2018, the Utah Supreme Court reprimanded Sixth District Juvenile Court Judge Brody Keisel. While overseeing a case, Judge Keisel had numerous out of court conversations regarding substantive matters in the case with the appointed case worker which were not disclosed to the other parties or made part of the record. Judge Keisel recognizes that these communications were ex parte in nature and should have been disclosed to all the parties in the case. Judge Keisel negligently (but not intentionally, willfully or with bad faith) engaged in conduct prejudicial to the administration of justice which brings a judicial office into disrepute. Judge Keisel has accepted responsibility for his actions and has expressed sincere remorse for any harm his actions may have caused. The judge's actions violated Code of Judicial Conduct Rule 2.9.