



December 2015

Report No. 15-12

Review of Florida's Judicial Qualifications Commission

at a glance

Judges in Florida are subject to investigation and discipline by the Judicial Qualifications Commission (JQC) and the Florida Supreme Court. The vast majority of the complaints received by the JQC are dismissed because they do not allege conduct in violation of the Code of Judicial Conduct.

During the last five years, the JQC typically received between 600-700 complaints, with fewer than 5 complaints per year resulting in formal charges against judges. However, the number of complaints received in Fiscal Year 2014-15 was 13% higher than the prior fiscal year and the number of cases in which formal charges were filed doubled.

There has also been an increase in the number of cases in which the Supreme Court has rejected the JQC's recommendation for discipline and imposed a more severe sanction.

The commission is similar to judicial discipline bodies in other highly populated states. Some differences involve what entity ultimately administers sanctions and the scope of work.

The Judicial Qualifications Commission could enhance access to available information on its process and outcomes. In addition, while commission members believe the process generally works well, some possible improvements were suggested.

Scope

[Chapter 2015-232](#), *Laws of Florida*, directs OPPAGA to conduct a review of the structure, function, and effectiveness of the Judicial Qualifications Commission in reviewing and

disciplining the conduct of judges and justices.¹

Background

Most states in the U.S. established judicial discipline bodies between 1960 and 1980. Florida's Judicial Qualifications Commission (JQC) was established by amendment to *The Constitution of the State of Florida* in 1968 to investigate allegations against Florida judges or justices of misconduct or mental or physical disability that seriously interfere with the performance of judicial duties.² To be reviewed by the commission, complaints must allege conduct that violates the Code of Judicial Conduct or incapacity.³ The commission may issue private admonishments to judges found to have committed judicial misconduct and, when appropriate, may formally charge a judge and recommend public disciplinary action to the Florida Supreme Court.

¹ See proviso language pertaining to funds in Specific Appropriations 2667 and 2668. This proviso also directs OPPAGA to review the state courts system at the circuit level, including staffing; an evaluation of the efficiency and effectiveness of court administration; an assessment of the court's case processing and recommendations to improve efficiency; and to examine the use of training and travel funds for judges and staff. See *A Review of Florida Circuit Courts*, [OPPAGA Report No. 15-13](#).

² The commission's authority only includes Florida's 992 appellate, circuit, and county judges and does not include federal judges or judges in other states.

³ The [Code of Judicial Conduct for the State of Florida](#) establishes standards for the ethical conduct of judges and is designed to provide guidance to judges and candidates for judicial office. In addition, it provides a structure for regulating judges' conduct through disciplinary agencies.

The commission is an independent entity and is not part of the Supreme Court or the state courts system and establishes its own rules.⁴ The commission is composed of 15 members: six judges (two from the district courts of appeal, two from the circuit courts, and two from county courts), four attorneys, and five laypeople.⁵ The judges are chosen for membership on the commission by all the judges of the courts of appeal, circuit courts, or county courts, respectively, by not less than a majority of the membership. The Board of Governors of the Florida Bar chooses the attorney members and the Governor appoints laypeople. All commission members serve six-year terms and must be registered voters.⁶

The Legislature appropriated \$891,416 in general revenue funds, which included funds for four staff, to the Judicial Qualifications Commission for Fiscal Year 2015-16.⁷ The four commission staff are the executive director/general counsel, an assistant general counsel, and two support staff. Contracted investigators and private attorneys perform most of the investigatory and litigation work of the commission.

Findings

The Judicial Qualifications Commission complaint and hearing process has multiple steps

Complaints about judges are initially received and reviewed by Judicial Qualifications Commission staff. Staff sends complaints within the commission’s jurisdiction to the commission for review. The commission itself is divided into

two investigative panels and one hearing panel. A complaint may move from staff to an investigative panel and then to a hearing panel if it is determined at each stage to merit further consideration. However, very few complaints move beyond the investigative panel.

Most complaints received by the JQC are summarily dismissed; complaints falling within the commission’s jurisdiction that allege ethical misconduct are investigated. The commission relies on complaints from the public, attorneys, and members of the judiciary to begin an investigation of a judge for alleged misconduct.⁸ Complaints must be filed in writing with the JQC.⁹ The complainant must provide his/her name, address, and telephone number(s); the judge’s name, address, and judicial level; a statement of facts; whether the complaint arises from a court case and related case information; and a list and copies of supporting documents. In Fiscal Year 2014-15, the commission received 771 complaints.¹⁰

Commission staff screens all complaints to determine whether they fall within the commission’s jurisdiction. Staff will screen out complaints against a federal judge or a judge from another state because the commission does not have jurisdiction over these judges. If a complaint falls within the commission’s jurisdiction, staff will review the complaint to determine if it alleges ethical misconduct by a judge. Those complaints that staff determines do not allege ethical misconduct are summarized and referred to an investigative panel of the commission for summary dismissal. All complaints that do allege ethical misconduct or incapacity due to mental or physical illness are referred to a commission investigative panel for consideration. (See Exhibit 1.)¹¹

⁴ Per s. 12(a)(4), *The Constitution of the State of Florida*, the commission’s rules, or any part of the rules, may be repealed by general law enacted by a majority vote of the membership of each house of the Legislature, or by the Supreme Court, five justices concurring.

⁵ Section 43.20(4), *F.S.*, sets the membership selection requirements.

⁶ Section 43.20(5), *F.S.*, allows for members to be reimbursed for travel, transportation, and per diem expenditures to attend commission meetings; however, members are not compensated for their service on the commission.

⁷ Forty-one percent of the funds are appropriated for salaries and benefits, 42% for the work of contracted investigators and litigation attorneys, and 17% for expenses of commission members and staff.

⁸ The JQC may initiate complaints; however, commission members reported this is rare and usually involves cases that have received media attention.

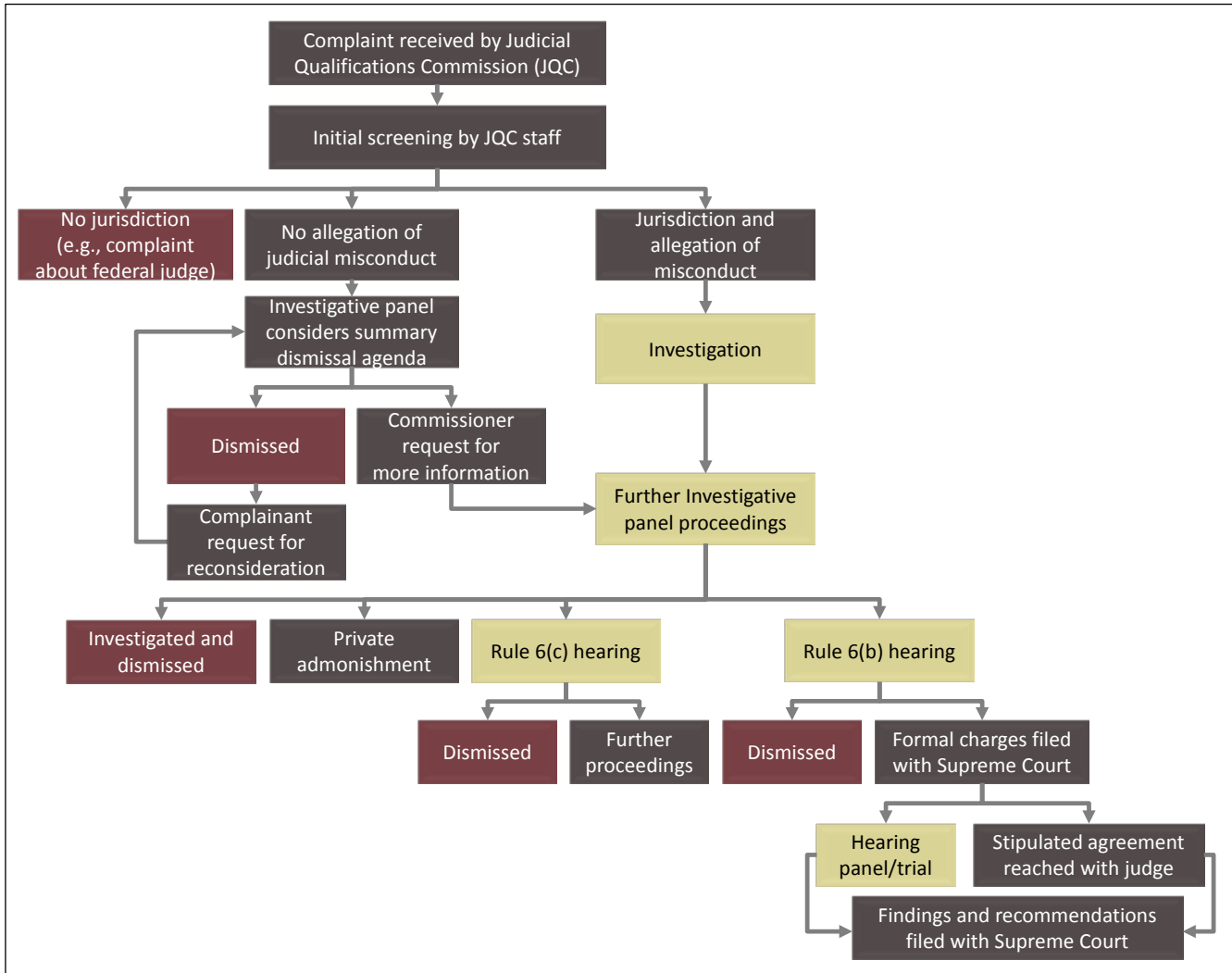
⁹ The complaint form must be typed or legibly hand printed, signed, and dated.

¹⁰ This number excludes complaints submitted involving federal judges, magistrates, hearing officers, or attorneys that fall outside the commission’s jurisdiction.

¹¹ Commission staff report that the majority of complaints received by the commission involve judicial decisions or rulings and are outside the commission’s jurisdiction.

Exhibit 1

The Judicial Qualifications Commission Process is Complex and Involves Multiple Steps



Source: OPPAGA analysis of information from the Judicial Qualifications Commission.

The commission convenes two investigative panels that are each made up of nine commissioners. As required by *The Constitution of the State of Florida*, four judges, two lawyers, and three non-lawyers comprise the investigative panel.¹² These panels meet approximately every six weeks, depending on the volume of cases scheduled.¹³ Staff provides panel members materials in advance so they can review them before

¹² Section 12(f)(2)b., *The Constitution of the State of Florida*.

¹³ Investigative panel meetings are held on Thursdays and Fridays and are normally four to five hours long.

scheduled meetings. The role of the investigative panel is to receive or initiate complaints, conduct investigations, dismiss complaints, and submit formal charges to the commission’s hearing panel, if warranted. The panel’s determination to proceed with formal charges is analogous to a finding of probable cause.

As described above, the panel reviews the recommendation of staff to summarily dismiss a group of complaints that do not allege ethical misconduct. Panel members may request that any complaint on the summary dismissal

agenda be further investigated. In the vast majority of cases, the investigative panel votes to follow the staff recommendation. For example, 570 complaints, or 74% of complaints received, were summarily dismissed by the investigative panel in Fiscal Year 2014-15.

Commission investigative panels have several options for handling cases that allege ethical misconduct. The investigative panel also reviews complaints that the staff find to be within the commission's jurisdiction. Prior to the panel's review, staff opens a file and begins an investigation, usually conducted by an investigator under contract with the commission. The panel may also review video recordings of court proceedings if the alleged misconduct occurred during open court.

The investigative panel has several options for handling alleged misconduct.

- *Dismissal*—Some complaints are dismissed by the investigative panel after initial investigation reveals insufficient evidence of misconduct. Fourteen complaints were dismissed after investigation in Fiscal Year 2014-15.
- *Private admonishment*—If the investigative panel determines that the judge's conduct does not rise to the level of formal sanctions, the commission may call or send a letter to the judge cautioning him/her that the conduct should be avoided in the future. Five cases were resolved this way in Fiscal Year 2014-15.
- *Rule 6(c) hearing*—In some instances, the investigative panel may require the judge to appear before it to respond to the commission's concerns about the judge's behavior. This is known as a Rule 6(c) hearing, or Notice of Required Appearance, and is typically used when the commission does not anticipate filing formal charges in cases where the judge's misconduct is not egregious.¹⁴ If the panel is satisfied with

the judge's response at this hearing, the panel dismisses the complaint without further action. If the panel is not satisfied with the judge's response or the hearing reveals evidence of other misconduct, the panel will require further investigation of the complaint and further proceedings. One 6(c) hearing was held in Fiscal Year 2014-15.

- *Rule 6(b) hearing*—If an initial investigation suggests a basis for the complaint and the alleged conduct is sufficiently serious that it would merit sanction if true, the panel conducts a Rule 6(b) hearing, or Notice of Investigation. The judge is invited to attend a 6(b) hearing but is not required to do so. In some cases, the panel may dismiss the case after a 6(b) hearing. For example, if a judge appears at the hearing and satisfies the panel that the complaint is unfounded, the panel will dismiss the case. The panel may also decide to dismiss the case at this stage if the judge has violated an ethical canon but has taken measures to prevent future occurrences.

If the investigative panel determines that there is probable cause to believe the judge has violated the Code of Judicial Conduct, after a simple majority vote of the panel, the commission will file formal charges with the Clerk of the Supreme Court.¹⁵ The commission's Notice of Formal Charges is prepared by the JQC's counsel and notifies the judge of its finding of probable cause to institute formal proceedings. The filing contains the findings of the investigative panel, the specific judicial canons violated, and notice to the judge of his/her right to file a written response to the charges with the Clerk of the Supreme Court within 20 days of receiving the formal charges.

¹⁴ The terms 6(b) and 6(c) are the rule reference in the Florida Judicial Qualifications Commission Rules, which govern JQC proceedings.

¹⁵ When filing formal charges, the investigative panel can request that the Supreme Court suspend the judge from office, with or without pay, pending final determination of the inquiry. However, suspension pending the outcome of the case is a rarely used sanction.

The commission held 23 6(b) hearings in Fiscal Year 2014-15 and nine cases resulted in formal charges.

If the commission cannot reach a stipulated agreement with the judge about discipline after formal charges are filed, a hearing panel may be convened. In some cases, the JQC will reach agreement with a judge about what discipline to recommend to the Supreme Court after the investigative panel 6(b) hearing. In this situation, the JQC will file formal charges and a stipulation for recommended sanctions with the Supreme Court at the same time. However, in many cases the judge is not in agreement with the investigative panel's decision to file formal charges and is unwilling to stipulate to recommended discipline. In these cases, a hearing panel is convened for a full hearing in a formal trial-like setting, usually within three to six months, after which the commission may make a recommendation for sanctions to the Supreme Court. These hearings are open to the public.

The six members of the hearing panel are selected by the chair of the JQC, who also selects one hearing panel member to be the chair of the panel. The members of the hearing panel cannot be the same commissioners who were on the investigative panel that found probable cause. Two judges, two lawyers, and two non-lawyers comprise the hearing panel pursuant to *The Constitution of the State of Florida*.¹⁶

Hearing panel proceedings are similar to a trial and often take place in the judge's home circuit. Both the hearing panel and the judge are represented by attorneys who present the evidence and arguments to the hearing panel members, who function as a jury and sit in the jury box during the trial. The proceedings are recorded by a court reporter. Although a hearing panel is more formal than an investigative panel, the Rules of Evidence are not strictly applied. For example, the panel can consider hearsay evidence and may question

witnesses during the hearing. The commission held four hearing panels in Fiscal Year 2014-15.

The hearing panel deliberates after the presentation of the evidence and advises the hearing panel attorney of its decision. The hearing panel may recommend discipline short of removal by a simple majority vote, but must recommend removal by at least a two-thirds vote. The panel's attorney prepares the order, which includes findings and recommendations, and circulates the order among the members of the panel for approval. The chair of the panel will sign the order after all members have reviewed and approved it. The hearing panel attorney then files the order with the Supreme Court.

The commission may recommend several types of sanctions. The hearing panel, or the investigative panel when agreement is reached with the judge, may recommend any or all of the following types of sanctions: removal, public reprimand, fine, or suspension with or without pay.

An analysis of JQC disciplinary recommendations from Fiscal Years 2010-11 through 2014-15 found that public reprimand was the most frequent recommendation (eight cases). In four cases the JQC recommended involuntary retirement due to a permanent disability. In an additional four cases judges resigned before discipline was imposed by the Supreme Court. In three cases the JQC recommended disciplinary actions that coupled public reprimand with other sanctions, such as letters of apology and counseling. There were also three cases in which the JQC recommended public reprimand with a fine and suspension, two cases where it recommended public reprimand with a fine, and one case where it recommended a public reprimand and suspension. In only two cases did the commission recommend removing the judge from the bench.¹⁷ See Appendix A for detailed

¹⁷ One case was dismissed due to the judge's resignation and one case resulted in removal by the Supreme Court.

¹⁶ Section 12(f)(2)c., *The Constitution of the State of Florida*.

information on the 26 cases in which formal charges were filed in the last five fiscal years.

The Florida Supreme Court makes the final decision in all judicial disciplinary cases. Formal charges filed by the Judicial Qualifications Commission are treated as high profile by the Supreme Court clerk’s office. This case designation means that all the pleadings filed in the case and the docket can be viewed by the public on the court’s website.¹⁸ If a stipulated discipline agreement is filed at the same time that formal charges are filed with the court, the case will be scheduled for the next court conference.

The Supreme Court may accept, reject, or modify the findings, conclusions, and recommendations of the commission. The court then issues an order with its final decision that details the facts in the case, a review of the JQC’s case, whether they agree with the commission’s recommended discipline, and what sanctions will be imposed.

The number of complaints and formal charges has increased recently

The number of complaints received by the Judicial Qualifications Commission has increased over the last two fiscal years, as has the number of formal charges filed by the commission with the Florida Supreme Court. As a result of the increased workload, the commission is requesting additional funding for Fiscal Year 2016-17. On average, JQC cases take 15 months from receipt of a complaint to making a recommendation for judicial discipline to the Supreme Court. A number of factors affect the length of cases, including scheduling issues and requests for continuances by accused judges.

Complaints received by the Judicial Qualifications Commission have increased. As shown in Exhibit 2, the number of complaints received in Fiscal Year 2014-15 is the highest in the last five years. The 771 complaints

represent an almost 13% increase over the prior year. Additionally, formal charges were filed in nine cases in Fiscal Year 2014-15, after an average of four cases in the preceding four years.

**Exhibit 2
Complaints to the Judicial Qualifications Commission Increased During the Last Two Fiscal Years**

Actions	Fiscal Year				
	2010-11	2011-12	2012-13	2013-14	2014-15
Complaints	621	659	618	684	771
Summarily Dismissed	573	569	548	610	570
Formal Charges	4	4	2	4	9

Source: OPPAGA analysis of Judicial Qualifications Commission data Fiscal Year 2010-11 through Fiscal Year 2014-15.

Variability in the commission’s workload has budget implications. For example, in Fiscal Year 2012-13, when the number of complaints declined, the commission reverted \$256,521 in funding that was not used for investigatory and litigation expenses. However, in its Fiscal Year 2016-17 Legislative Budget Request, the commission is requesting additional funds to address the increase in the number of complaints that may require additional meetings of the investigative panels and the hearing panels, as well as more hours of work from contracted investigators and attorneys. Specifically, the commission is requesting an additional \$115,671 in general revenue for expenses and contracted services for operational and investigatory costs and increased travel costs for commission members and staff.

The Supreme Court has rejected the commission’s recommendations for discipline in several recent cases. Recently, there has been an increase in the number of cases in which the Supreme Court has rejected the commission’s recommendation and returned the case for further proceedings. The final result in most of these cases was a harsher sanction than was originally recommended. Since 2007, the court rejected the commission’s

¹⁸ The [Florida Supreme Court](#)’s website provides all documents of JQC cases pending before the court.

recommendation in only seven of the cases where formal charges were filed; however, six of the seven rejections occurred between 2013 and 2015.

Members of the commission we interviewed acknowledged that the court is rejecting their recommendations more often. Although the commission typically makes recommendations that are consistent with the sanctions that have been imposed in the past for similar conduct, commissioners expressed an intention to have future recommendations reflect the current direction of the court. Several commissioners believe this trend is in line with the current court's stricter approach to attorney discipline cases.

The length of time required for a case to move through the commission process varies greatly and depends on many factors. On average, it took 395 days, or about 13 months, for a case to move from the commission's receipt of a complaint to a recommendation being made to the Supreme Court.¹⁹ However, the length of time varies, ranging from 1 to 911 days. Commission members reported several factors that contribute to the length of time a case takes during the commission process, including²⁰

- the schedules of the judge, the judge's attorney, and the contract attorneys hired by the JQC;
- the extent to which the judge challenges the proceedings; and
- the commission practice to let criminal cases conclude before beginning the investigative and hearing process.²¹

¹⁹ The average length of cases from the commission's receipt of complaint to final disposition by the Supreme Court is 522 days, but this includes the time during which the Supreme Court has control of the case.

²⁰ Fourteen cases moved from complaint to recommendation in less than 400 days.

²¹ This recognizes that judges with criminal charges related to the JQC complaint are unlikely to agree to participate in the JQC process until the criminal case is resolved.

The investigative and hearing proceedings of the Judicial Qualifications Commission are confidential

As a constitutional entity, the JQC operates under stricter confidentiality requirements than state agencies. *The Constitution of the State of Florida* specifies that all proceedings of the Judicial Qualifications Commission are confidential until the investigative panel files formal charges with the Clerk of the Supreme Court.²² Once the commission files formal charges, the constitution specifies that the charges and all further proceedings, such as hearing panels, shall be public. Furthermore, all documents filed with the Supreme Court are available on the Supreme Court's website.

However, since all proceedings before formal charges are filed are confidential, little of the Judicial Qualifications Commission's process is visible to the public. For example, in Fiscal Year 2014-15, the commission held 16 meetings, none of which were open to the public; filed nine formal charges with the Supreme Court that are posted on the court's website; and held four hearing panels (i.e., trials) for accused judges that were open to the public. Over the past five fiscal years, 23 cases involved filing formal charges, with seven hearing panels held. In addition, the JQC is not required by the constitution, rule, or statute to produce an annual report of its activities. The commission has produced two annual reports and currently has the 2014 report posted on its website. This report provides limited information on the JQC process, commission members, and process-related data such as the number of formal charges filed.²³

Confidentiality of the judicial discipline process is not unique to Florida. We examined

²² Section 12(a)(4), *The Constitution of the State of Florida*.

²³ In contrast, a number of the states we reviewed provided detailed annual reports that included descriptions of the disciplinary body's staff and budget; the state's judicial system; the number and type of judges under the judicial disciplinary body's jurisdiction; description of the disciplinary process; and data over time pertaining to complaints, type of complainant, and dispositions.

nine states (California, Georgia, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Texas), all of which specify that the proceedings of the judicial discipline entity are confidential at least until formal charges are filed.

Commission members stressed the importance of maintaining confidentiality during the complaint and investigative phases of JQC proceedings in order to

- encourage complaints by protecting the complainant's anonymity;
- ensure that complainants will not face reprisal or retaliation by the judge as a result of the complaint;
- protect the judge's independence and reputation from baseless complaints such as those filed by defendants displeased with a judge's decision in their case, attorneys trying to have a judge recused from a case, or individuals involved in judicial election campaigns;
- protect a judge's due process rights during the investigative phase of the process; and
- protect the public's view of the judiciary by encouraging judges to acknowledge and remediate their conduct or behavior to the commission.

However, the confidentiality provision in *The Constitution of the State of Florida* somewhat limited our access to key components of the commission's processes and our ability to assess the efficiency and effectiveness of commission processes, as well as the consistency of its decisions and actions. The commission documents we were unable to review included complaints screened out by staff, cases dismissed by the commission either summarily or after investigation, and letters of private admonishment. In addition, consistent with the confidentiality requirements in *The Constitution of the State of Florida*, we were not permitted to attend investigative panel meetings.²⁴

The Judicial Qualifications Commission is similar in many ways to other states' judicial discipline entities, though some differences exist

We examined the judicial discipline bodies in nine other highly populated states and found that the JQC is similar to these entities in terms of general makeup of the disciplinary body and size of staff. However, we also found differences, especially in terms of the entity that has the ability to impose sanctions, the scope of work, and whether a judge can be disciplined for conduct regardless of how long ago it occurred.

The commission is similar to judicial discipline entities in other states in terms of general makeup, numbers of judges within its jurisdiction, and the size of staff. As described in Appendix B, the number of members of judicial discipline bodies in the other states we examined ranges from a low of 7 in Georgia to a high of 28 in Ohio. However, the Ohio board has broader jurisdiction as it also handles attorney discipline (addressed in Florida by the Florida Bar Association). The entities are also similar to Florida's commission in that they include a mixture of judges, attorneys, and laypeople.

The number of judges within the entity's jurisdiction ranges from 500 in North Carolina to 3,677 in Texas. Six of the nine entities in other states have jurisdiction over at least some judges who do not have to be members of the bar, which may expand the work of the discipline entity by increasing the number of judges under its jurisdiction.

The size of the staff of judicial discipline entities in the nine other states ranges from a low of 4 in Georgia to a high of 45 in New York, with five states having fewer than 10 staff.

Sunset Commission access to confidential documents, records, meetings, and proceedings of the state's judicial disciplinary body.

²⁴ In 2013, Texas Senate Bill 209 and S.J.R. 42 gave the Texas

Judicial disciplinary entities in other states differ in terms of the role of the Supreme Court, the entities' scope of work, and statutes of limitations. The role of the Supreme Court in the judicial discipline process in other states varies. In five of the nine states, the state Supreme Court is not the final authority for imposing sanctions as it is in Florida. In New York, for example, a judge may request that the state's highest court review the sanctions determined by the disciplinary body, but the court is not otherwise involved.

Judicial disciplinary bodies in some states have a broader scope of work than Florida's commission. In three states (California, Texas, and New York) the judicial disciplinary entity not only investigates complaints but also administers the sanctions. Three states' entities (Georgia, North Carolina, and Ohio) also issue formal advisory opinions and give informal advice to judges, in addition to their other work. This broader scope of work may be reflected in the larger number of staff in these states.

Florida does not have a statute of limitations on the period of time for filing a complaint against a judge. However, California and North Carolina have a formal time limitation. For example, California will not generally consider any complaint where the alleged misconduct took place more than six years before the commencement of the judge's current term. North Carolina has a three-year limitation in most cases. However, cases involving campaign violations have a three-month limitation.

Suggestions for Improvements

The Judicial Qualifications Commission could increase access to available process and outcome information. While *The Constitution of the State of Florida* specifies that all proceedings of the Judicial Qualifications Commission are confidential until the

investigative panel files formal charges with the Clerk of the Supreme Court, the commission could make improvements to increase access to available information. Our review found that since so few of the in-person proceedings take place in public, the process seems somewhat hidden from view. The commission could ameliorate this by making more information readily and regularly available to the public. For example, the commission should consider amending its rules to require the publication of an annual report. Several other states produce comprehensive annual reports that include such information as statistical information about cases and descriptions of cases in which formal charges were filed.²⁵ Many of these reports are required by the entities' rules or laws.

The commission should also consider improving its website to provide additional information about its activities. Currently, Florida's website provides minimal information, such as a brief description of the commission's structure, a copy of its rules, and the complaint form. The commission's website provides a link to the Supreme Court's website for information about cases and related filings. However, in addition, the commission could provide basic data on the number of complaints received, formal charges filed, and the number of hearing panels held, and also emphasize the availability of case documents for public review on the Supreme Court's website.

Two states, California and Pennsylvania, have undertaken recent initiatives to improve their websites. For example, the California Commission on Judicial Performance began updating its website to make it more accessible and searchable, including providing access to the commission's annual reports dating back to 1983, as well as providing 10-year and 20-year summaries of discipline statistics. In Pennsylvania, the Judicial Conduct Board also increased the functionality of its website by providing information about the judicial

²⁵ Examples of other state judicial disciplinary bodies' annual reports include [California](#), [Colorado](#), [Hawaii](#), [Kansas](#), [New York](#), [Ohio](#), [Pennsylvania](#), and [Texas](#).

complaint process, a description of the range of decisions that can be made, and links to other websites dealing with judicial conduct.

Judicial Qualifications Commission members identified other potential improvements. According to commission members, recent changes, such as the addition of an assistant general counsel to the staff; increasing the number of investigative panels from one to two; and conducting certain business by e-mail, such as voting on the approval of recommended sanctions, have increased the efficiency of the JQC process.

A few other potential improvements were mentioned.²⁶ These suggestions included

²⁶ Some of the suggested changes could be made by a change to the commission's rules, while others could require an

automatically suspending a judge without pay pending the outcome if he/she is unnecessarily delaying the process, creating a statute of limitations on filing complaints, and revealing the identity of the complainant once formal charges are filed.

Agency Response ---

In accordance with the provisions of s. 11.51(2), *Florida Statutes*, we submitted a draft of our report to the Executive Director of the Florida Judicial Qualifications Commission for his review and response. The Executive Director's written response has been reproduced in Appendix C.

amendment to *The Constitution of the State of Florida*.

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-9213), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

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Appendix A

Formally Charged Judicial Disciplinary Cases, Fiscal Years 2010-11 Through 2014-15

The majority of Judicial Qualification Commission cases in which formal charges are filed typically involve circuit court judges and most frequently result in a public reprimand by the Florida Supreme Court. In addition to a public reprimand, many cases also involve a fine and suspension from the bench without pay. Exhibit A details judicial disciplinary cases for the past five fiscal years.

Exhibit A

Several Cases Have Resulted in the Judicial Qualifications Commission Filing Formal Charges With the Supreme Court

Name of Judge	Formal Charges Filed	Judicial Level	Alleged Misconduct/Disability	Judicial Qualifications Recommendation to Supreme Court	Supreme Court Action
Colodny	July 2010	Circuit Court	Improper campaign finance activities	Public reprimand and \$5,000 fine	Public reprimand and \$5,000 fine
D. Cohen	March 2011	Circuit Court	Refusal to recuse in cases where there was a personal conflict of interest	Public reprimand	Public reprimand
Singbush	May 2011	Circuit Court	Tardiness, proclaiming religious beliefs in court	Public reprimand, letters of apology, and documenting timeliness	Public reprimand, letters of apology, and documenting timeliness
Hawkes	May 2011	District Court of Appeals	Destroying public documents, using a court employee for a private matter, requesting gifts from private vendors, and using a coercive and intimidating leadership style	N/A	Resigned prior to Judicial Qualifications Commission hearing
Shea	June 2011	Circuit Court	Rudeness towards attorneys in his courtroom and sentencing a defendant without his lawyer present	Public reprimand. The Supreme Court rejected this recommendation and required a hearing, resulting in recommendation of public reprimand, letters of apology, and counseling	Public reprimand, letters of apology, counseling, and a 60 day suspension without pay
Pando	March 2012	County Court	Wrote a letter to the Florida Department of State, Division of Corporations requesting reinstatement of corporation status for a campaign contributor	N/A	Resigned prior to Judicial Qualifications Commission recommendation
Nelson	May 2012	County Court	Driving under the influence	Public reprimand	Public reprimand
B. Cohen	October 2012	County Court	Public statement about a pending case and involvement in a partisan political campaign	Public reprimand	Public reprimand
Hawkins	December 2012	County Court	Using her judicial office to promote her private business, including selling or attempting to sell her products in the courthouse, using court property and staff to promote the business, and using time while not on the bench to run the business	Public reprimand, 3-month suspension without pay, and \$17,000 fine	Removal
Simpson	December 2012	Circuit Court	Permanent disability	Involuntary retirement due to a permanent disability	Involuntary retirement due to a permanent disability
Glant	June 2013	Circuit Court	Permanent disability	Involuntary retirement due to a permanent disability	Involuntary retirement due to a permanent disability
Watson	July 2013	Circuit Court	Misconduct during settlement negotiation in a civil trial while still an attorney	Removal	Removal

Name of Judge	Formal Charges Filed	Judicial Level	Alleged Misconduct/Disability	Judicial Qualifications Recommendation to Supreme Court	Supreme Court Action
Krause	December 2013	County Court	Improper campaign donations	Public reprimand and \$25,000 fine	Public reprimand, \$25,000 fine (first incident); 30-day suspension without pay (second incident)
	September 2014		Improper campaign statements	Public reprimand	
Kautz	December 2013	Circuit Court	Improper demeanor in court and appearance on behalf of her sister in a criminal matter	Public reprimand	Public reprimand
Sheehan	January 2014	Circuit Court	Driving under the influence	Public reprimand	Public reprimand
Decker	February 2014	Circuit Court	Improper campaign behavior, expressing how his religious beliefs would determine his judicial behavior, conflict of interest in several matters handled while an attorney	Public reprimand and 90-day suspension without pay	Pending
Pollack	May 2014	County Court	Driving under the influence and under the influence on the bench	Removal	Dismissed due to judge's resignation
Flood	July 2014	County Court	Improper relationship with a bailiff	Public reprimand	Public reprimand
Schoonover	August 2014	Circuit Court	Unstable and disruptive pattern of behavior including unfounded allegations of mistreatment by other judges, installation of cameras to record behavior of other judges, false reports to the Florida Department of Law Enforcement about other judges, making Facebook friend request to party in divorce case	N/A	Resigned prior to recommendation
Murphy	August 2014	County Court	Belittling a public defender, challenging him to a fight, grabbing and punching the public defender outside the courtroom, called 7 cases on the calendar without the attorney present and prompted waivers of a speedy trial from each defendant	Public reprimand, 120-day suspension without pay, \$50,000 fine, repeat phase one of the judicial education curriculum, and continue in mental health therapy program	Pending. Suspension and 20 days to show cause why he should not be removed from the bench permanently
Coker	November 2014	Circuit Court	Permanent disability	Involuntary retirement due to a permanent disability	Involuntary retirement due to a permanent disability
Recksiedler	February 2015	Circuit Court	Misrepresented driving record to the Judicial Nominating Commission	Public reprimand	Public reprimand
Schwartz	February 2015	County Court	Verbally assaulted convenience store owner for refusing to display her campaign sign, wrote on originals from the court file making them unusable and removed them from the case file	Public reprimand and letter of apology	Public reprimand, letter of apology, \$10,000 fine, and 30-day suspension without pay
Imperato	March 2015	Circuit Court	Driving under the influence (convicted in a criminal proceeding)	Public reprimand, \$5,000 fine, 20-day suspension without pay, alcohol evaluation and treatment contract with Florida Lawyers Assistance Program (investigative panel). Supreme Court rejected JQC recommendation, sent case back to JQC for a hearing. This panel recommended public reprimand, \$20,000 fine, 3-month suspension without pay, and alcohol evaluation and treatment as above	Pending. Supreme Court rejected Judicial Qualifications Commission's proposed sanctions on 4/30/15; hearing panel held on 9/10/15
Fulford	April 2015	Circuit Court	Using her judicial office to influence attorneys, for the appearance of impropriety caused by her close friendship with a county sheriff, for opposing a candidate publicly during elections, and for interjecting herself in a domestic battery case involving the son of her significant other	Involuntary retirement due to a permanent disability	Involuntary retirement due to a permanent disability
Griffin	May 2015	Circuit Court	Election campaign violations including opening a campaign account and lending money to her campaign prior to filing qualifying paperwork	Public reprimand	Public reprimand

Source: OPPAGA analysis of Judicial Qualification Commission data and Florida Supreme Court discipline rulings.

Appendix B

Judicial Discipline Commissions in Other States

We examined the judicial discipline bodies in nine other populous states and found that the Judicial Qualifications Commission is similar to these entities. Information in the table is based on the most recent available from a particular state and may represent different fiscal years or combinations of fiscal and calendar years depending on the state’s reporting practices.

Exhibit B-1

The Florida Judicial Qualifications Commission Is Similar to the Judicial Disciplinary Entities in Other Populous States

State	Name of Judicial Disciplinary Body	Commission Membership	Number of Staff and Roles	Fiscal Year 2013-14 Budget	Number of Complaints Received in 2014 ¹	Number of Judges Under Authority of Commission	
Florida	Judicial Qualifications Commission	15 6 judges 4 attorneys 5 laypeople	4 1 executive director/general counsel 1 assistant general counsel 2 support staff	\$891,416	771	992	
California	Commission on Judicial Performance	11 3 judges 2 attorneys 6 laypeople	22 1 director/chief counsel 1 trial counsel 3 intake attorneys 6 investigating attorneys 1 commissioner legal advisor 9 administrative staff	\$4.2 million	1,212	1,825 Judicial 332 Subordinate judicial officers (commissioners and referees)	
Georgia	Judicial Qualifications Commission	7 2 judges 3 attorneys 2 laypeople	4 1 director 1 chief investigator 1 case manager 1 administrative assistant	\$518,504	412	1,800	
Illinois	Judicial Inquiry Board and Independent Courts Commission	9 Board 2 judges 3 attorneys 4 laypeople	5 1 executive director/general counsel 2 investigators 2 administrative staff	\$679,500	500	956	
Michigan	Judicial Tenure Commission	7 Commission 5 judges 2 laypeople	9 5 judges 2 attorneys 2 laypeople	6 1 executive director 3 staff attorneys 2 support staff	\$1.1 million (expenditures)	568	1,259

State	Name of Judicial Disciplinary Body	Commission Membership	Number of Staff and Roles	Fiscal Year 2013-14 Budget	Number of Complaints Received in 2014 ¹	Number of Judges Under Authority of Commission
North Carolina	Judicial Standards Commission	13 5 judges 4 attorneys 4 laypeople	1 1 executive director 1 commission counsel	\$323,078	250	500
New York	Commission on Judicial Conduct	11 4 judges 1 attorneys 6 laypeople	46 1 administrator/counsel 4 deputy administrators 21 administrative staff 13 attorneys 7 investigators	\$5.5 million	1,767	3,300
Ohio	Board of Professional Conduct	28 7 judges 17 attorneys 4 laypeople	5 1 director 1 senior counsel 1 counsel (part-time) 1 deputy clerk 1 administrative secretary	\$2.4 million (expenditures)	136	730
Pennsylvania	Judicial Conduct Board	12 3 judges 3 attorneys 6 laypeople	11 1 chief counsel 1 deputy chief 2 deputy counsels 3 field investigators 4 support staff	\$1.6 million	793	1,034
Texas	Commission on Judicial Conduct	13 6 judges 2 attorneys 5 laypeople	14 1 executive director 1 general counsel 5 attorneys 1 legal assistant 3 investigators 3 administrative staff	\$954,227	1,136	3,677

Source: OPPAGA analysis of annual reports and communication with staff of disciplinary bodies in other states.

Appendix C



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HON. JAMES A. RUTH
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November 30, 2015

R. Philip Twogood
Coordinator
Office of Program Policy Analysis and
Government Accountability
111 West Madison Street, Room 312
Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Mr. Twogood:

The Judicial Qualifications Commission (JQC) strives to be responsive and transparent to the public and welcomes this review of its operations and procedures. Legislative analysts Laurie Scott and Drucilla Carpenter did a wonderful job of researching and compiling the *Review of Florida's Judicial Qualifications Commission*. I hope the JQC has been responsive to them in their endeavor. The suggestions for improvement are consistent with the internal discussion within the JQC.

In regard to the suggestion that the JQC website be improved, it certainly can and should provide richer detail about the policies and procedures of the Commission, and, to the extent possible the outcomes of complaints.

As background, in March 2010 the Office of State Courts created the JQC website. The website provided links to the annual report and the Florida Supreme Court website where frequently asked questions, rules, cases, and outcomes could be found. This was done without cost to the JQC.

However, there is no doubt that a more robust webpage with more information is needed. Within the JQC there is an ongoing discussion about what information and in what form can its actions be published.

And to be fair, other jurisdictions with similar workloads have more staff to devote to compiling and collating the information.

In addition to improving its website, the JQC is actively reviewing its procedural rules to promote efficiencies in its procedures while preserving due process for the responding judges.

Although it may be beyond the scope of this review, an additional area of concern lies with the ongoing litigation against the JQC. This litigation is ancillary to the judicial disciplinary process and takes several forms. First, there are dissatisfied complainants who refuse to accept that the JQC is not an appropriate forum to review and overturn decisions with which they disagree. They file suit in both state and federal courts seeking to require the JQC to discipline judges for rulings or decisions.

Next, death sentenced inmates routinely involve the JQC in collateral attacks on their sentences by attempting to obtain constitutionally protected records from the JQC. This has required the JQC to appear and resist those requests in circuit courts around the state.

Finally, judges against whom charges have been filed often attempt to derail the disciplinary process. These challenges are outside the ordinary litigation and typically occur in the federal court system.

While none of this collateral litigation has been particularly successful, it does divert resources and attention away from the JQC's primary mandate to investigate allegations of judicial misconduct. And this activity is not reflected in the work product encompassed by the report.

Again, thank you for this opportunity to enhance the JQC's important service to the State of Florida.

Sincerely yours,



Michael L. Schneider
Executive Director and
General Counsel

MLS/mc