

From: Michael Schneider <mschneider@floridajqc.com>

To: VolusiaExposed.Com

Subject: Re: Functionality Of Florida's JQC

Date: Fri, 15 Sep 2017 14:55:11 +0000 (09/15/2017 10:55:11 AM)

Thank you for your inquiry. I am glad to attempt to assist in providing an accurate understanding of the Commission's duties and responsibilities.

You state, "Our concern is the appearance that the JQC has in the past - taken "corrective actions" against judicial misconduct - without the filing of formal charges - thus insulating the offending judge's misconduct from the public record - and the watchful eye of public opinion."

You continue, "We allege that such manipulates both the JQC process - and the intent of the Florida State Constitution - leaving the validity of the JQC to be called into question."

You then provide the example of the State of Georgia in which you assert that the citizens of State of Georgia have lost faith in the validity of their JQC, prompting a constitutional amendment. While you quote language from the ballot initiative that speaks to openness "to the public in some manner," you apparently are unaware of what occurred in Georgia to precipitate the constitutional amendment and its effect. You also provide as an attachment a screenshot of the out-of-date Georgia JQC website. (For example, the Georgia Commission has ten members under the new law.)

Certain Georgia judges, who were unhappy with the disciplinary actions taken by the Georgia JQC against them, sought to undermine the independence of the commission and to impose legislative control over the judicial disciplinary process. One former state judge, who stepped down after allegations of misconduct, became a legislator and spearheaded the effort to undermine "the watchdog agency that went after him."

The impact of the constitutional amendment was to transfer oversight of the commission to the General Assembly and added language that "the findings and records of the commission shall not be open to the public except as provided by the General Assembly by general law."

The recently enacted enabling legislation passed by the General Assembly mandates that "All information regarding a disciplinary or incapacity matter of a judge shall be kept confidential by the investigative panel and commission staff before formal charges are filed..." So the effect of the Georgia amendment was not only to shift control over the process to the General Assembly, it also had the effect of increasing confidentiality of judicial disciplinary inquiries.

Turning to Florida, despite your assertion that the Commission "manipulate[s] the Constitution," the Florida Commission is only upholding the constitution as interpreted by the Florida Supreme Court. The constitution mandates that unless formal charges are filed, all proceedings before the Commission are

confidential. “[C]onfidentiality allows the JQC to efficiently process complaints from any and all sources while protecting the complainant from recriminations and the judicial officer from unsubstantiated charges.” In re Graziano, 696 So.2d 744 (Fla.1997). This confidentiality is reciprocal. Even the responding judge is not entitled to obtain a copy of the complaint at this or any stage of the proceedings.

The Florida Supreme Court has consistently ruled that complaints in which formal charges are not warranted are, and remain confidential. (see Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit, 840 So.2d 1008 (Fla. 2003).) Indeed, the Supreme Court has warned the Commission that it should be vigilant in upholding the constitutional confidentiality of its proceedings.

Thus, the Commission, as a creature of the constitution, is bound by the confidentiality mandated by that document.

As to your belief that “corrective measures” concerning misconduct are withheld from the public record, that is not the case. As mentioned in the Code of Judicial Conduct, “It is not intended, however, that every transaction will result in disciplinary action.” The judicial disciplinary process is not like a spelling bee, where any alleged error immediately subjects a judge to punishment. Indeed, it is not the purpose of the process to impose punishment at all. Rather the inquiry is to determine whether the alleged conduct “demonstrates a present unfitness to hold office,” an extremely high standard to demonstrate.

This response would also be incomplete if it failed to mention that this inquiry was received not from an identified individual, instead the email is from “VolusiaExposed.com.” From a cursory review of this website, it is apparent that the authors of the site have taken interest in a particular court case with which they have disagreed with the fact that the case was instituted, how the case prosecuted, and rulings and decisions in the case.

The judicial disciplinary process is not an appropriate vehicle to collaterally attack court proceedings with which one disagrees. The Commission, as well as a judge, should not be influenced in its actions “by partisan interests, public clamor, or fear of criticism.”

The Commission in no way “assist[s] in the hiding of judicial misconduct by not filing ‘formal charges’ - while taking solace in the fact - that they (JQC) some how corrected the misconduct under the cloak of confidentiality and informal corrective action.”

I hope this reply more fully explains the constitutionally mandated confidentiality imposed upon the Commission.

Michael Schneider
Executive Director and
General Counsel
Florida Judicial Qualifications Commission

P.O. Box 14106
Tallahassee, Florida 32317
850-488-1581