

NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STANDING COMMITTEE ON JUDICIAL ETHICS



2012-2013 BIENNIAL REPORT

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Introduction

Section 1.464 of the Nevada Revised Statutes directs the Nevada Commission on Judicial Discipline to submit annual and biennial reports summarizing the activities of the Commission during the preceding fiscal year or the preceding two fiscal years. This report responds to that directive and includes statistical information regarding the disposition of complaints and the length of time proceedings have been pending as well as a statement of the budget and expenses of the Commission. There is also a description of the Commission's authority and process with regard to judicial discipline, a description of the actions taken by the Commission during the biennium, and a list of the Commission members.

Included in this report is also a description of the Standing Committee on Judicial Ethics. This Committee was created by Nevada Supreme Court in 1997, with a revision in 2011, and its authority can be found in the Rules Governing the Standing Committee on Judicial Ethics, part VIII of the Supreme Court Rules. Although this information is not required to be a part of this report, the "Standing Committee" is an integral part of the maintenance of judicial ethics in this state. The Standing Committee acts as a reference point for judges and the public and also as a preventive measure so that ethical problems can be avoided. Additionally, pursuant to the Supreme Court Rules, the executive director of the Commission is also the executive director of the Standing Committee. This effectively melds the Commission and the Standing Committee functions regarding judicial ethics although the two bodies operate independently. Both, the Commission and the Standing Committee, are comprised of volunteers (other than the appointed judicial members of the Commission) who agree to undertake important functions.

It should be noted that the most recent fiscal year has been one of transition for the Commission and for the Standing Committee. Most notably, the executive director from 2002 to July of 2013 retired after a long tenure with the two bodies and after a distinguished career serving the State of Nevada. David Sarnowski was with the Nevada Attorney General's Office in its criminal division for eighteen years, serving as chief deputy for about thirteen years. He served the Commission and Standing Committee admirably and he will be missed. The timing of his retirement was difficult and halting as the Commission was dealing with several high-profile disciplinary matters, difficult litigation, and a large number of complaints and investigations. Mr. Sarnowski delayed his planned retirement to assist the Commission. As of the date of this report, an interim executive director is assisting both bodies until the position is permanently filled.

Preparing this report is no small task and is very time-consuming. No additional funds have been provided to the Commission for this and the Commission and its staff are already constantly wrestling with a large number of complaints, complex disciplinary actions and investigations, and legislatively-imposed deadlines for addressing complaints and investigations. The Commission would hope that the Legislature would provide the necessary resources to the Commission to perform its obligations.

Much of the work of the Commission and the Standing Committee has been reflected on the detailed website maintained by the staff. The website, found at <http://judicial.state.nv.us>, is divided into a part for the Commission and a part for the Standing Committee. The former provides extensive information as to the mission and processes of the Commission, including reference to the constitution, statutes, procedural rules and complaint forms. It also contains the Commission disciplinary decisions, an index of the decisions, case references, and statistics, among other matters. As such, much of the information for this report can already be found on line. The same is true for the Standing Committee portion of the website. That part of the website contains the explanation of the Standing Committee's responsibilities, copies of its advisory opinions, an index of the opinions, and biographies of current members. Accordingly, this report hereby incorporates herein the extensive information which can be found on the website. Because almost all of the information provided in this report is found on the Commission's website (and more), an alternative to the required annual and biennial reports would be for the information now required in those reports to be maintained on the Commission's website, with the required addressees of the current mandated report notified by letter annually of the changes made.

Respectfully submitted,

Brian Hutchins
Acting Executive Director and General Counsel
Nevada Commission on Judicial Discipline
October, 2013

I. The Nevada Commission on Judicial Discipline.

Established by the Nevada Constitution, Article 6, Section 21, the Commission is the body authorized to censure, retire, remove or otherwise discipline judges in this state. Any appeals from the action of the Commission may be appealed by the affected judge to the Nevada Supreme Court. The Legislature establishes the grounds for disciplinary action, including violations of the Code of Judicial Conduct which the Supreme Court adopts. Article 7 of the Constitution still provides for impeachment by the legislature. The supreme court has referred to the Commission as a court of judicial performance.

The Legislature has also adopted sections 1.425-1.470 of the Nevada Revised Statutes which supplements the constitutional provisions and provides for the circumstances under which a judge may be disciplined and many of the procedural aspects of judicial discipline. The Commission has also adopted Procedural Rules and Commission Procedures which supplement the constitutional and statutory provisions. The Commission also decides whether a judge is incapacitated and what actions to take in that instance. The Commission's website at www.judicial.state.nv has information regarding the Commission, constitution, statutes and rules governing the Commission, all of the Commission's public decisions and orders, and information regarding members and staff. Please see Appendix A for an outline of the information available on the website.

Membership.

The Commission is composed of three lay members, two district court judges and two lawyers. The three lay members are appointed by the governor. No more than two can be of the same political party and they must reside in different counties. Alternates are appointed under the inherent power of the appointing authority, pursuant to Nevada Supreme Court case law. The chairman and vice-chairman are selected from the three primary lay appointees, by vote of the entire Commission. Current lay members are Mary Lau (Republican, Lyon County), Doug Jones (Republican, Douglas County), Gary Vause (Democrat, Clark County), Cliff Cichowlaz (Democrat alternate, Mineral County), JoAnne Elston (Republican alternate, Washoe County).

Two district judge members are appointed by the Nevada Supreme Court. District judge alternates are appointed to serve in case of disqualification and limited jurisdiction judges are appointed as alternates to serve during public proceedings against judges from that level of the judiciary, pursuant to statutory mandate. No judge may sit in a case involving a judge from his or her court.

Current district court judicial members are Jerome Polaha (Second Judicial District-Washoe County), Mark Denton (Eighth Judicial District-Clark County), Richard Wagner (alternate) (Sixth Judicial District-Humboldt, Pershing, and Lander Counties), and Leon Aberasturi (alternate) (Third Judicial District-Lyon County). Justice Court alternate members are Janiece Marshall (Las Vegas Justice Court), Patricia Calton (Wells Justice Court), Patricia Lynch (Reno Justice Court) and Rodney Burr (Henderson Justice Court).

Two lawyer members are appointed by the State Bar of Nevada. Standing alternates are appointed to serve in case of disqualification. Current lawyer members are Karl Armstrong (Las Vegas), Wayne Chimarusti (Carson City), Bruce Hahn (alternate) (Reno), and Lawrence Irwin (alternate) (Las Vegas).

Process.

Complaints are filed with the Clerk of the Commission. The executive director can file complaints as well. The Commission and its staff review all complaints and the Commission meets to decide whether to investigate the complaints or any portion of a particular complaint ("limited investigation"). At this stage, the Commission must find that a reasonable inference can be drawn that a judge committed misconduct or is incapacitated. If so, the Commission directs the executive director to perform an investigation. The executive director contracts with a private investigative agency to perform investigative functions. The Commission must then decide from investigative reports whether there is a likelihood that it could find "a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge named in the complaint." If so, the Commission must require the judge to respond to the complaint. After the judge responds and the Commission considers the response, the Commission must again decide whether there is the required evidence for disciplinary action. It is after such a finding that a case could move forward to a public proceeding.

If a public proceeding ensues, the executive director contracts with private counsel to serve as "Special Counsel" (also referred to as "Special Prosecutor"). The Special Counsel independently reviews the evidence and files a Statement of Formal Charges, based on counts for which the Commission issued a finding of reasonable probability. The judge, with or without counsel, files an answer and a public hearing, similar to a trial, ensues. The burden of proof is on the Special Counsel to show by clear and convincing evidence that a violation of the Code of Judicial Conduct occurred.

Other possible dispositions include summary dismissal without investigation (most common), dismissal after full or limited investigation and issuance of letter of caution (characterized under the rules as a “non-disciplinary event”). If the Commission determines that a judge has committed misconduct that is minor and would be most appropriately addressed through rehabilitation, treatment, education or minor corrective action, the Commission may enter into an agreement with the judge to defer formal disciplinary proceedings and require the judge to undergo the appropriate corrective action.

Please see Appendix B for a flow chart.

Possible Sanctions.

The main function of the Commission is to protect the public, not to discipline judges. Nevertheless, the range of punishments includes: permanent removal from office, bar to holding judicial office (used for judges who have left the bench before a case against them is adjudicated), suspension with or without pay, completion of a probationary period pursuant to conditions deemed appropriate by the Commission, pursuit of a remedial course of action, fines (normally payable to local law libraries), additional education and training at the judge’s expense, public censure, public or private reprimand, requirement to undergo monitoring by the Commission and mentoring by an appropriate individual. Judges can be required to issue public and private apologies to affected individuals. Judges can also be required to undergo physical and/or psychiatric evaluation and testing if the issue of a mental or physical disability is raised during the disciplinary process.

Appellate Review.

Only a judge, not a complainant, can appeal from the Commission’s decision. Appeal is taken directly to the Nevada Supreme Court (“NSC”). The NSC defers to the Commission’s findings of fact and it determines if the record supports the findings. The NSC conducts a de novo review of legal issues, including appropriateness of the punishment. The NSC can lessen the punishment or increase it. The court has adopted the “objective reasonable person standard” to evaluate whether conduct violates the Code of Judicial Conduct. The Commission applies the same standard.

In July 2007, the Commission also conducted one non-public interim removal or suspension hearing (Halverson) that was the subject of an appeal to the Nevada Supreme Court and resulted in the first published opinion regarding

that process. It was then and remains one of a few decisions throughout the United States dealing with interim suspensions. Statutory provisions enacted in the wake of the decision provide additional due process requirements.

Time Limitations

Effective in January of 2010, the Nevada Legislature imposed time limits on the Commission's ability to consider complaints filed against judges. In NRS 1.4655, the law now provides that the Commission shall not consider complaints from acts occurring more than three years before the complaint or more than one year after the complainant knew or should have known of the conduct, whichever is earlier. Exceptions to this time limit are when there is a continuing course of conduct and the end of the conduct is within the time limit; there is a pattern of recurring misconduct and at least one act is within the time periods; and, a judge has concealed or conspired to conceal misconduct evidence for which any such time period is not included in the time limits. The Legislature has also required that the Commission take action within 18 months after receipt of a complaint by dismissing the complaint, attempting to resolve it pursuant to statute, entering into a deferred discipline agreement, imposing discipline pursuant to an agreement with the judge, or authorizing the filing of a formal statement of charges based on the required evidentiary standard.

The Commission is authorized to extend these time limitations pursuant to NRS 1.4681 for good cause shown. Additionally, the time limits are to be computed without including periods of delay attributable to another judge, periods of delay between Commission meetings, periods of negotiation between the Commission and the subject judge, and periods when a complaint is held in abeyance pending the disposition of a court case related to the complaint. Any dismissal for failure to comply with time limits shall not occur unless the Commission determines that the delay is unreasonable and the judge's rights to a fair hearing have been violated. A delay of an investigation by more than 24 months after the filing of a complaint is prima facie evidence of an unreasonable delay.

In effect, then, the Legislature has established a statute of limitations on judicial misconduct complaints. Notably, most jurisdictions in the country have no statute of limitations for judicial misconduct and some disciplinary actions have occurred based on conduct many years prior and even before an individual became a judge.

II. Commission Action

The work of the Commission described below shows that the Commission and its staff are constantly busy. The Commission meets either in person or in telephone conference calls many times during the year to review complaints, to consider investigations, and to determine resolution of cases. It also meets in person for formal proceedings. Additionally, the Chairperson is constantly in contact with the executive director about policy and meeting matters.

Formal Proceedings/Public Action

The Commission has the authority to impose discipline including censure and removal pursuant to NRS 1.440(1). The Commission did close four formal or public proceedings during the biennium as noted below. A public proceeding is held only when the Commission has made a finding that a reasonable probability the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge.

During this fiscal year, a public case was closed following a public hearing held the prior fiscal year on June 23, 2011 against former Justice of the Peace James EnEarl. Former Judge EnEarl entered into a stipulation with the Commission and the Commission ordered that Respondent never seek or hold judicial office in the State of Nevada. It was agreed that the evidence could establish that the judge repeatedly engaged in comments and actions with court staff that were of an extremely inappropriate and offensive character and continued doing so after he was asked to stop the behavior. This violated former Canons 1, 2A and 3B and Rules 1.2 and 2.3 of the current Code.

The Commission held one public hearing during fiscal year 2012 and this was regarding Justice of the Peace Reese Melville. Judge Melville entered into a stipulation in which he agreed that he had violated Canons 2(A), 2(B), 3B(5) and 3B(7) which were in effect in 2008 and also violated Rules 2.2, 2.3 and 2.11(a) of current Canon 2 of the Nevada Code of Judicial Conduct. Judge Melville also agreed to a public admonishment and to attend a course on judicial ethics at the Nevada Judicial College at his own expense. It was agreed that the evidence could establish that the judge made inappropriate comments as to the action he would take against his former bailiff upon learning the bailiff was the subject of a criminal complaint; the judge initiated ex parte contact with an attorney in the criminal case directing the attorney to alter a pleading; and, the judge failed to disqualify himself in a case in which the former bailiff was a litigant even though the judge felt sufficiently conflicted.

During fiscal year 2013, the Commission held two public hearings. One public hearing involved Justice of the Peace Terry Graham. An amended formal statement of charges was filed with the Commission stating the Respondent had violated former Canon 1A, former Canon 2A, former Canon 4A, and current Rule 2.16 of the Nevada Code of Judicial Conduct. Judge Graham entered into an admission and stipulation after which the Commission unanimously found the Respondent should be publicly reprimanded for his conduct. The judge had purchased construction equipment from a marital estate while a restraining order was in effect prohibiting the property from being disposed of and the judge became aware of the order. The judge also falsely told an investigator the judge used cash and a loan in paying off the debt owed on the equipment when the judge had actually borrowed the funds from a private individual and court clerk.

A second public hearing was held in fiscal year 2013 involving Judge Valorie Vega. An amended formal statement of charges was filed with the Commission stating the Respondent had violated Rule 2.8 of the Code of Judicial Conduct and the judge entered into a stipulation with the Commission. The Commission unanimously found the Respondent should be publicly reprimanded for her conduct. The judge, while presiding over a murder case, required the jury, attorneys and staff to participate in the proceedings for a continuous period from about 1:12 p.m. on one day to about 6:57 a.m. the next day to accommodate the judge's personal schedule and the judge was not courteous to the involved individuals. The judge also recessed court on about six previous occasions in the same case to enable her to attend her daughter's high school soccer games.

One other public matter that occurred during the biennium is included here. On November 29, 2012, the Commission suspended Judge Steven E. Jones, a judge in the family court division of the Eighth Judicial District Court in Las Vegas, from the exercise of judicial office. He was indicted by a federal grand jury of felony crimes in an indictment filed on October 24, 2012 in Las Vegas. Pursuant to NRS 1.4675, the suspension is with pay pending outcome of the indictment.

Informal Resolution and Private Discipline

The informal resolution of a complaint outside of a formal, public hearing is available to the Commission at different stages of the disciplinary process and in different forms. Of course, pursuant to NRS 1.4653, the Commission is authorized to remove a judge, publicly censure a judge or impose "other forms of

discipline” when the judge has committed willful misconduct, has willfully or persistently failed to perform the duties of office, or is habitually intemperate. Public censure or other forms of discipline may also be imposed if the violation of the Code of Judicial Conduct was not knowing or deliberate. The different stages of the process where other forms of discipline may be imposed include:

- A complaint alleges that a judge is incapacitated, an investigation reveals a judge may have a disability, or the judge raises a disability as an issue before the filing of a formal statement of charges. The Commission shall attempt to resolve these matters informally and this includes voluntary retirement and addressing the disability adequately through treatment and with a deferred discipline agreement. NRS 1.4665(2).
- If the Commission reasonably believes that a judge has committed an act or engaged in behavior that would be more appropriately addressed through rehabilitation, treatment, education or minor corrective action, the Commission may enter into an agreement with the judge to defer formal disciplinary proceedings and require the desired action. NRS 1.468(1). This cannot be done if the Commission has determined pursuant to NRS 1.467 that there is sufficient evidence that could establish grounds for disciplinary action under NRS 1.4653 (willful misconduct or habitually intemperate). The misconduct must be minor in nature. Upon compliance with the conditions of the agreement, the Commission may dismiss the complaint or take other appropriate action. NRS 1.468(2)-(6).
- After a judge responds to a complaint and the Commission finds that a reasonable probability exists that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge, the Commission can then find that the misconduct would be addressed more appropriately through rehabilitation, treatment, education or minor corrective action, the Commission may enter into a deferred discipline agreement. This is not available for misconduct involving several described actions. NRS 1.467(3),(4).

See also Commission Procedural Rules 29. During the biennium, the Commission did determine that private, informal discipline was appropriate in several cases. Because no formal, public proceedings occurred in these cases, they remain confidential pursuant to NRS 1.4683. As such, only limited information can be provided.

- A justice of the peace entered into a stipulation to a private reprimand by the Commission involving two separate complaints. The allegations involved a judge allowing improper questioning of a witness, a biased ruling in favor of the parties who were relatives of a government official, and making inappropriate comments outside of court to a party in the case.
- A district court judge stipulated with the Commission to resolve a complaint regarding inappropriate conduct outside of court contrary to the Canons. The judge agreed to a letter of caution and to attend an ethics course sponsored by the Nevada Judicial College at the judge's own expense.
- A district court judge entered into a stipulation with the Commission to attend specific courses at the Nevada Judicial College and to attend counseling for various violations of the Nevada Code of Judicial Conduct stemming from improper bench demeanor.
- A senior judge stipulated to attend specific courses at the Nevada Judicial College at the judge's own expense and to issue an apology to a complainant regarding inappropriate comments to a prospective juror. This case was resolved during the fiscal years but not closed until after the education requirements were met.
- A complaint against a municipal court judge was dismissed after the judge met informally with the Commission regarding his handling of the appointment of defense counsel for an indigent defendant.
- The Commission entered into a stipulation with a hearing master for private discipline with a requirement of attendance at an educational course at the Nevada Judicial College at the hearing master's own expense. The complaint alleged the master took improper action in a case in retaliation against the complainant.

Cautionary Letters

The Commission is authorized at several steps in the disciplinary process to issue a letter of caution to a judge as described here:

- The Commission determines that a complaint does not contain allegations of objectively verifiable evidence from which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated but a letter of caution is appropriate. NRS 1.4657(2).
- After authorizing an investigation, the Commission reviews the report and determines that there is not a reasonable probability

that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against a judge but a letter of caution should be issued. NRS 1.4667(2).

- After initially finding sufficient evidence and requiring a judge to answer a complaint, the Commission determines that there is not a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against a judge but a letter of caution should be issued. NRS 1.467(2).

See also Commission Procedural Rules 12, 13, 29. Pursuant to NRS 1.4657 (2), a letter of caution is not a form of discipline. Nevertheless, when a letter of caution is issued, it can be considered by the Commission when deciding the appropriate action to take on a subsequent complaint unless the caution is not relevant to the misconduct alleged in the subsequent complaint. A cautionary letter is not available for misconduct involving several described forms of serious misconduct. NRS 1.467(4). The Commission issued several letters of caution during the past two fiscal years.

- The Commission issued a cautionary letter to a justice of the peace for failure to properly administer the court and failure to disqualify.
- The Commission issued a cautionary letter to a municipal court judge for the appearance of impropriety regarding the disposition of a traffic citation of a close friend.
- The Commission issued a cautionary letter to a justice of the peace for failure to disclose a connection to an expert or to disqualify and for impropriety in relating personal experiences.
- The Commission issued a cautionary letter to a municipal court judge for demonstrating a lack of courtesy to litigants.
- The Commission issued a cautionary letter to a justice of the peace for lack of dignity and courtesy to court staff and improper touching of the opposite gender.

Statistical Information

Without doubt, the large majority of complaints filed with the Commission regarding judicial conduct result in a dismissal. This is largely due to the fact that many complainants seek a remedy with the Commission regarding the merits of their litigation when the Commission has no jurisdiction over such. Additionally, many complaints are bare allegations of bias or prejudice by the complainant who feels that he or she lost in the litigation because the judge must have been

biased against the complainant, although there is no real evidence of such. Many complaints are also filed by inmates seeking yet another avenue of relief from their convictions or are of the categories mentioned above. Additionally, of the complaints which warrant a full investigation and then an answer from the respondent judge, many are considered to involve minor conduct deficiencies which are remedied by informal resolution. The actual statistics are reported here.

It should also be pointed out that there are over 170 judges and judicial officers in Nevada. This includes 82 district court judges, 67 justices of the peace and 21 municipal court judges. Additional judicial officers include supreme court justices, senior judges, pro tem judges, hearing masters and referees. The readers should keep this in mind when considering the number of complaints received by the Commission and the resolution of most of those complaints.

At the beginning of the fiscal year, the Commission had 22 cases pending and opened 147 during the fiscal year, thus handling 169 complaints. During the fiscal year, the Commission dismissed 109 complaints with no investigation, dismissed 7 after investigation and dismissed ten cases with an informal resolution.

Although the Commission had 22 pending cases at the beginning of the fiscal year, five cases were new cases pending Commission review and were closed during the fiscal year. Nine of those pending cases were dismissed after an informal resolution, i.e., cautionary letter, private reprimand or education requirement or a private meeting with the judicial officer in question. One case was closed after a public hearing held in the prior fiscal year. One very complex case has been pending since 2006 and another since 2007, both of which warrant continuation due to the complexity of the cases and other factors. Three of those pending cases ultimately went to a public hearing and two of those pending cases were closed during the fiscal year after investigation.

At the beginning of FY 2013, the Commission had 45 cases pending and opened 155 cases during the fiscal year, thus handling 200 complaints. The Commission dismissed 47 complaints with no investigation, dismissed 15 after investigation and dismissed 1 complaint with an informal resolution.

Of the 45 cases pending at the beginning of the fiscal year, nineteen cases were new cases pending Commission review. Eleven complaints were investigations that were ongoing resulting in dismissal after the investigations were completed. Seven complaints were investigations ultimately resulting in informal discipline or deferred discipline. One very complex case pending since

2006 and another since 2007 are currently in a public forum wherein a judge was suspended and litigation is pending. Another case with a substantial and complex investigation resulted in a public case by the end of the fiscal year. Four other cases also ultimately went to a public hearing. One case was pending completion of an education requirement.

Additional statistical information can be reviewed in Appendix C.

Budget and Staff

The Legislature approved a budget of \$595,738 for Fiscal Year 2012. The Commission returned \$10,512. The Commission's budget for 2013 as approved by the Legislature was \$589,050. The Commission requested and was granted an additional amount of \$80,787 for the payout of the executive director's retirement and additional monies needed for ongoing cases. The Commission's staff consists of a full-time general counsel/executive director, a full-time management analyst and a full-time paralegal. It contracts with attorneys and investigators as necessary. The full-time management analyst position has been left vacant following an incumbent's retirement so that the new executive director can select the replacement.

The executive director is also responsible for the administrative duties of the Standing Committee on Judicial Ethics. The Committee's staff consists of a part-time management analyst position which is also currently vacant at this time.

Unfortunately, the biennium has seen an increase in the number of complaints filed and the Commission and staff have had their hands full with many public cases, numerous pending investigations, difficult litigation, and changes in the staff. The Commission also conducted a search for a new executive director which took several months and included three months after the retirement of the incumbent. In order to address this, the Commission hired a contract attorney toward the end of July, 2013 when the former executive director retired. This came right as significant litigation involving pending disciplinary cases was occurring in the supreme court and a district court. Moreover, there was a backlog of pending complaints. This required the Commission to hire other contract attorneys to assist with the backlog as the biennium came to a close.

It should also be pointed out that the Commission consistently struggles with its budget toward the close of each fiscal year. At that time, the Commission often pared back necessary expenses and must ask investigators

and contract attorneys to suspend their work until the new fiscal year as there are insufficient funds for payment. This consistent deficiency can be attributed to more and lengthy investigations, unanticipated public proceedings, unanticipated litigation against the Commission, and sometimes an increase in complaints. For the future, it may be wise for the Commission to have a contingency fund for just such purposes.

See Appendix D for budget charts.

Federal and State Litigation

Halverson v. Nevada Commission on Judicial Discipline, EEOC Case No. 487-2008-00730. Former Judge Halverson filed an equal employment opportunity complaint against the Judicial Discipline Commission which has not yet been adjudicated.

Scales v. Johnston, Togliatti, Nevada State Board of Nursing and Commission on Judicial Discipline, Case No. 2:09-CV-0368-JCM(RJJ). A complaint was received on March 8, 2010 alleging the Commission did not control a judge and allowed a judge to torture the plaintiff. The complaint has not been properly served and at this time, nothing has transpired on this case.

Timothy Fasano and Rebecca Lynn Fasano v. David A. Huff, et al., Case No. 37406. The Commission was served with a summons and complaint on November 7, 2011 alleging that the Commission had not handled a complaint properly and assisted in covering up the illegal actions of a judge. The district court issued an order dismissing plaintiffs' complaint against the Commission and the other defendants. Plaintiffs were also ordered to pay \$534.87 in costs and \$10,311 in attorney's fees to the Commission. The plaintiffs filed a notice of appeal. The Nevada Supreme Court issued an order affirming the district court's order on June 14, 2013 and the remittitur issued on July 17, 2013. The Commission is now seeking payment of the court ordered costs and attorney's fees.

Patrick A. Missud v. State of Nevada, et al., Case No. 4:11-cv-03567-DMR. The Commission received a copy of a complaint filed by Mr. Missud against the Commission itself as well as David Sarnowski, the Executive Director. The plaintiff, Mr. Missud, sends multiple documents to the Commission on a weekly basis. The Commission has not been officially served and there is currently nothing pending in court on this case with regard to the Commission.

In the Matter of Linda Dziuk-Cote v. Steve Kauffman, Case No. CV10-03450. A subpoena duces tecum for custodian of records for deposition was served on the Commission in January of 2013. The Commission filed a Motion to Quash the Subpoena. The Court issued an order on July 29, 2013 upholding the Discovery Commissioner's Recommendation and Order granting the Commission's Motion to Quash the Subpoena.

Herrera v. State of Nevada et al., Case No. 3:2012cv00602. The Commission received word from a district judge stating the Commission had been sued in a federal district court case from Oregon. The complaint was never served on the Commission and there is no action on this case.

III. Commission Members and Staff

The members of the Judicial Discipline Commission, other than the judge members, volunteer the substantial amount of time required to accomplish the extremely large amount of work required. The judge members, of course, must also dedicate time in addition to that demanded of them in their judicial positions. The biographies of the Commission members can be found on the Commission website and will not be repeated here although their names are listed here.

Regular Commission Members

Karl Armstrong, Esq.
Wayne Chimarusti, Esq.
The Honorable Mark R. Denton
Mr. Doug Jones, Chairman
Ms. Mary Lau
The Honorable Jerome Polaha
Mr. Gary Vause, Vice Chairman

Alternate Commission Members

The Honorable Leon Aberasturi
The Honorable Rodney T. Burr
The Honorable Patricia "Pat" Calton
Mr. Clifford Cichowlaz
Ms. JoAnn Elston
Bruce C. Hahn, Esq.
Larry Irwin, Esq.
The Honorable Patricia Lynch
The Honorable Janiece Marshall
The Honorable Richard Wagner

Staff Member Biographies

Because the previous executive director and general counsel served the Commission for the entire biennium being reported and his biography is no longer on the Commission website, it is important that the reader know the background of the person who served the Commission so well for so many years.

David F. Sarnowski, Former General Counsel and Executive Director

David F. Sarnowski was the General Counsel and Executive Director of the Nevada Commission on Judicial Discipline from March 2002 until July 22, 2013. Mr. Sarnowski was also responsible for the administration of the Standing Committee on Judicial Ethics, which was created by the Nevada Supreme Court.

He was born and raised in Hawthorne, Nevada and graduated from Mineral County High School in 1970. Mr. Sarnowski is a 1974 graduate of the University of Santa Clara, California (B.A., History) and a 1981 graduate of the University of Santa Clara Law School (Juris Doctor Degree). He also holds a master's degree in Strategic Studies from the United States Army War College, Carlisle Barracks, Carlisle, Pennsylvania.

He served as general counsel to the Nevada Industrial Commission and State Industrial Insurance System from 1981 to 1984. He served as a Deputy Attorney General from 1984 to 1989. He was appointed Chief Deputy Attorney General in the Criminal Justice Division in 1989 and served in that assignment until March 2002.

He is admitted to practice in the State of Nevada, the United States District Court for the District of Nevada, the Ninth Circuit Court of Appeals, the Tenth Circuit Court of Appeals, and the United States Supreme Court. He has litigated several cases in the United States Supreme Court and has argued three times before the high court. He has served as an instructor for classes sponsored or conducted by the Nevada Supreme Court, the State Bar of Nevada, the National Judicial College, the Association of Government Attorneys in Capital Litigation, the Nevada District Attorney's Association, the Nevada Judges' Association, the Nevada Prosecution Advisory Council, the Las Vegas Justice Court, the Clark County Family Court, and for various Peace Officer Standards and Training organizations.

In 2004, he served as a consultant to the Mongolian Judicial Discipline Commission. He was commissioned through the Reserve Officers Training Program as a Signal Corps lieutenant and served in the Regular Army of the United States as a commissioned officer from 1974 to 1978. During that time, he graduated from Airborne and Ranger school and was assigned to United States Army Europe. He was a member of the United States Army Reserve and Nevada National Guard from 1978 to 2004 when he retired. He was a commander at the platoon, company and battalion levels, and holds the

permanent rank of Colonel. Mr. Sarnowski retired from state service on July 22, 2013. The Commission thanks him and wishes him well.

IV. Introduction to the Standing Committee on Judicial Ethics.

The Standing Committee was created by Nevada Supreme Court Rules, now in part VIII, in 1997. The Committee's purpose is to provide judges and aspirants to judicial office advisory opinions regarding ethical matters that may arise in the ordinary course of judicial service, or in the elective or appointive process. The executive director of the Commission on Judicial Discipline also serves as the executive director of the Standing Committee.

The Committee has the functions to render non-binding advisory opinions on hypothetical questions regarding the Nevada Code of Judicial Conduct and to assist the Nevada Supreme Court by studying and recommending additions to, amendments to, or repeal of provisions of the Nevada Code of Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

The Committee is composed of six judges appointed by the Nevada Supreme Court. Three must be limited jurisdiction judges and three must be district court judges. Twelve attorneys are appointed by the State Bar of Nevada, one of whom is the chairman and one of whom is the vice-chairman. The current chairman is Reno attorney Michael Pagni (McDonald Carano) and the current vice-chairman is Las Vegas attorney Patrick Byrne (Snell & Wilmer). The officers are appointed by the Commission on Judicial Discipline following nomination by the members of the Standing Committee. Twelve non-attorneys (lay members) are appointed by the Governor. The members are appointed to two-year terms with a limit of no more than four consecutive full terms. The biographies of the Standing Committee members can be viewed on the Commission's website.

Advisory Opinions.

Process.

The opinion process begins when a judge or candidate submits a written hypothetical request to the executive director. Legal research submitted by the judge is accepted and encouraged. The chairman decides whether to form a panel and if he/she does, the Committee's administrative assistant contacts attorneys and judges to participate. Each panel must have one district judge and one limited jurisdiction judge, and six attorneys (including either the

chairman or vice-chairman). Panel members discuss the ethical issue(s) via telephonic conference(s) and vote whether to issue an opinion or not and on what the conclusion will be. The chairman or vice-chairman drafts the opinion or assigns the task to another attorney member of the panel or the executive director. Each panel member reviews the draft and provides input regarding the written product. The final opinion is signed by the panel chairman and then filed with the clerk of the Nevada Supreme Court. Final opinions are sent via e-mail to all Nevada judges/senior judges, the State Bar of Nevada, the American Judicature Society, selected media outlets, selected local and state agencies, and to interested attorneys' offices. They are also posted permanently on the Standing Committee's website where a topical index is located.

Limitations.

The Committee shall not act on requests for opinions when any of the following circumstances exist:

1. There is a pending state bar or judicial discipline commission complaint, investigation, proceeding, or litigation concerning the subject of the request.
2. The request constitutes a complaint against a member of the judiciary.
3. The request involves procedures employed by the judicial discipline commission in processing complaints against judges.
4. The request involves activities, the propriety of which depends principally on a question of law unrelated to judicial ethics.
5. Where it is known that the request involves a situation in litigation or concerns threatened litigation or involves the propriety of sanctions within the purview of the courts, such as contempt.
6. The committee has by majority vote determined that it would be inadvisable to respond to the request and has specified in writing its reasoning to the person who requested the opinion.

V. Standing Committee Action

It should be noted that the website for the Judicial Discipline Commission website also contains the website for the Standing Committee. See

<http://judicial.state.nv.us>. The Standing Committee portion of the website is divided into the following areas:

- a. Purpose of the Standing Committee
- b. Introduction to the Standing Committee
- c. Standing Committee Rules
- d. Nevada Code of Judicial Conduct
- e. Advisory Opinions
- f. Advisory Opinions Indexed by Topic
- g. Judicial Election Decisions
- h. Recent Developments
- i. Biographies of Standing Committee Members and Staff
- j. Interested in Becoming a Member of the Standing Committee
- k. Case References

This portion of the website is an excellent reference for those who may have judicial ethics questions. The Code of Judicial Conduct is set forth in full as are all advisory opinions ever issued by the Standing Committee. The section on advisory opinions indexed by topic allows a person to narrow a search regarding an issue to a relevant area of interest. Because so much information has been provided on the website, it will not be repeated here in the interest of economy.

Fiscal Year 2012 – Advisory Opinions

The Committee issued sixteen (16) opinions during fiscal year 2012.

JE11-007 dealt with the propriety of a judge sitting on a multidisciplinary team organized to review the death of a victim of crime that constitutes domestic violence pursuant to NRS 33.018.

JE11-008 dealt with the propriety of a judge voluntarily submitting comments to the parole board regarding the release of a prisoner.

JE11-009 dealt with the propriety of a district court judge serving as a court appointed special advocate or as a member of the board of directors of the CASA Foundation.

JE11-010 dealt with the propriety of a district court judge providing a reference letter supporting an applicant for appointment as a Court Appointed Special Advocate (CASA).

JE11-011 dealt with the propriety of a judge using uncommitted campaign funds to purchase a home security system.

JE11-012 dealt with the propriety of a pro tem judge testifying as expert witness.

JE11-013 dealt with the propriety of a continuing part-time justice of the peace representing a government, governmental agency or political subdivision of a government.

JE11-014 dealt with the propriety of a judge contacting vendors or sponsors to obtain donations to support the Nevada Judicial Leadership Summit program.

JE11-015 dealt with the propriety of a district judge or justice of the peace becoming a candidate for appointment to unexpired term of nonjudicial elective office while retaining judicial office.

JE12-001 dealt with the propriety of a candidate for judicial office accepting an invitation to speak at an event sponsored by a political organization when the invitation does not expressly state that only judicial candidates who are registered members of a given political party will be allowed to speak.

JE12-002 dealt with the propriety of judicial candidates riding together on the same campaign float in a public parade.

JE12-003 dealt with the propriety of a judicial candidate signing a campaign pledge and responding to a campaign questionnaire.

JE12-004 dealt with the propriety of a judge or candidate for judicial office serving as a delegate to a county, state, or national political convention.

JE12-005 dealt with the propriety of a judicial candidate soliciting or accepting campaign contributions during the nominating petition process.

JE12-006 dealt with the propriety of a judge or candidate for judicial office serving as a member of the board of a non-profit organization and volunteer as a security director for a special event on behalf of a non-profit.

JE12-007 dealt with the propriety of a judge co-hosting a television program on a commercial television network.

Fiscal Year 2013 - Advisory Opinions

The Committee issued seven (7) opinions during fiscal year 2013.

JE12-008 dealt with the propriety of a judicial candidate accepting a campaign contribution from a partisan political party and disseminating campaign materials at political party office.

JE12-009 dealt with the propriety of a judge soliciting or accepting donations to be used as incentives for participants in court administered drug court program.

JE12-010 dealt with the propriety of a judge providing a general letter of recommendation for a project manager based on personal knowledge of his performance.

JE12-011 dealt with the propriety of a judge serving as a member of the board of a homeowners' association.

JE13-001 dealt with the propriety of certain actions by a justice of the peace in the winding down of a private law practice upon election to the bench.

JE13-002 dealt with the propriety of a newly appointed judge (1) selling his law practice to a lawyer likely to appear before him on a regular basis and (2) maintaining an interest in real property leased to the state of Nevada.

JE13-003 dealt with the propriety of a judge acting as an informal legal advisor to a political organization.

VI. Members of the Standing Committee on Judicial Ethics

The members of the Standing Committee have been a dedicated group of individuals who, for most of them, volunteer their time and have the responsibility for answering important judicial ethics questions. For judges and hopeful judges, new situations arise all of the time and it is important that ethical situations be clarified as much as possible before a problem arises. The biographies of the Standing Committee members can be found on the Commission website, so those will not be repeated here. The reader is encouraged to become familiar with these individuals who donate their time and effort to assist the judiciary with their opinions. Nevertheless, the names of the Standing Committee members are listed here.

Judicial Members

Honorable Stephen L. George
Henderson Justice Court

Honorable Jim Wilson
First Judicial District Court

Honorable David Hardy
Second Judicial District Court

Honorable Nancy Allf
Eighth Judicial District Court

Honorable Bill Gardner
Reno Municipal Court

Honorable Ann Zimmerman
Las Vegas Justice Court

Attorney Members

Janette Bloom, Esq.
Attorney at Law

Bill C. Hammer, Esq.
Hammer & Associates

Kevin Briggs, Esq.
City of Ely

Carla Higginbotham, Esq.
U.S. Attorney's Office

Patrick G. Byrne, Esq.
Vice-Chairman
Snell & Willmer, LLP

Robert D. Martin, Esq.
Martin & Allison

Steven L. Day, Esq.
Day & Nance

Michael A.T. Pagni, Esq., Chairman
McDonald Carano & Wilson, LLP

Laurie Diefenbach, Esq.
Clark Co. Public Defender

G. David Robertson, Esq.
Robertson & Benevento

Eric Dobberstein, Esq.
Hamrick & Evans, LLP

Bernard Zadrowski, Esq.
Clark Co. District Attorney's Ofc.

Non-Attorney Members

Cynthia "Cindy" Brady
Brady Industries

Kenneth Gray
Project Coordinator
HealthInsight

Steve Chappell
Casino Executive

Fely Quitevis
Realtor

BIENNIAL REPORT 2012 - 2013

Donna L. Coleman
Children's Advocate

Robert Sulliman
Director of Security

Cindy Creighton
Executive Director
Nevada Contractors Assn

Sarah "Sally" Zola
Paralegal

William E. Dougan, M.D.
Retired Physician



State of Nevada Commission on Judicial Discipline



Wednesday, October 30, 2013

Nevada Commission on Judicial Discipline

- ◆ Purpose of the Commission
- ◆ Complaint Process: Confidential Proceedings
- ◆ Complaint Process: Formal Public Proceedings
- ◆ Guide to Ethical Obligations & Filing a Complaint
- ◆ Complaint Form (pdf format)
- ◆ Complaint Form (html format)
- ◆ Introduction to the Nevada Commission on Judicial Discipline
(Information relative to membership, process, possible sanctions and appellate review)
- ◆ Nevada Code of Judicial Conduct
- ◆ Constitutional Provisions Governing the Commission
- ◆ Nevada Revised Statutes Governing the Commission
- ◆ Commission Procedural Rules
- ◆ Commission's Adopted Procedures
- ◆ **Pending Public Formal Statement of Charges and Answers (NRS 1.467)**
- ◆ Index of Commission Decisions

- ◆ Commission Decisions and Orders
- ◆ State of Nevada Judicial Education Requirements

- ◆ Biography of Commission Members, Alternate Commission Members and Staff
- ◆ Interested in Becoming a Member of the Nevada Commission on Judicial Discipline?

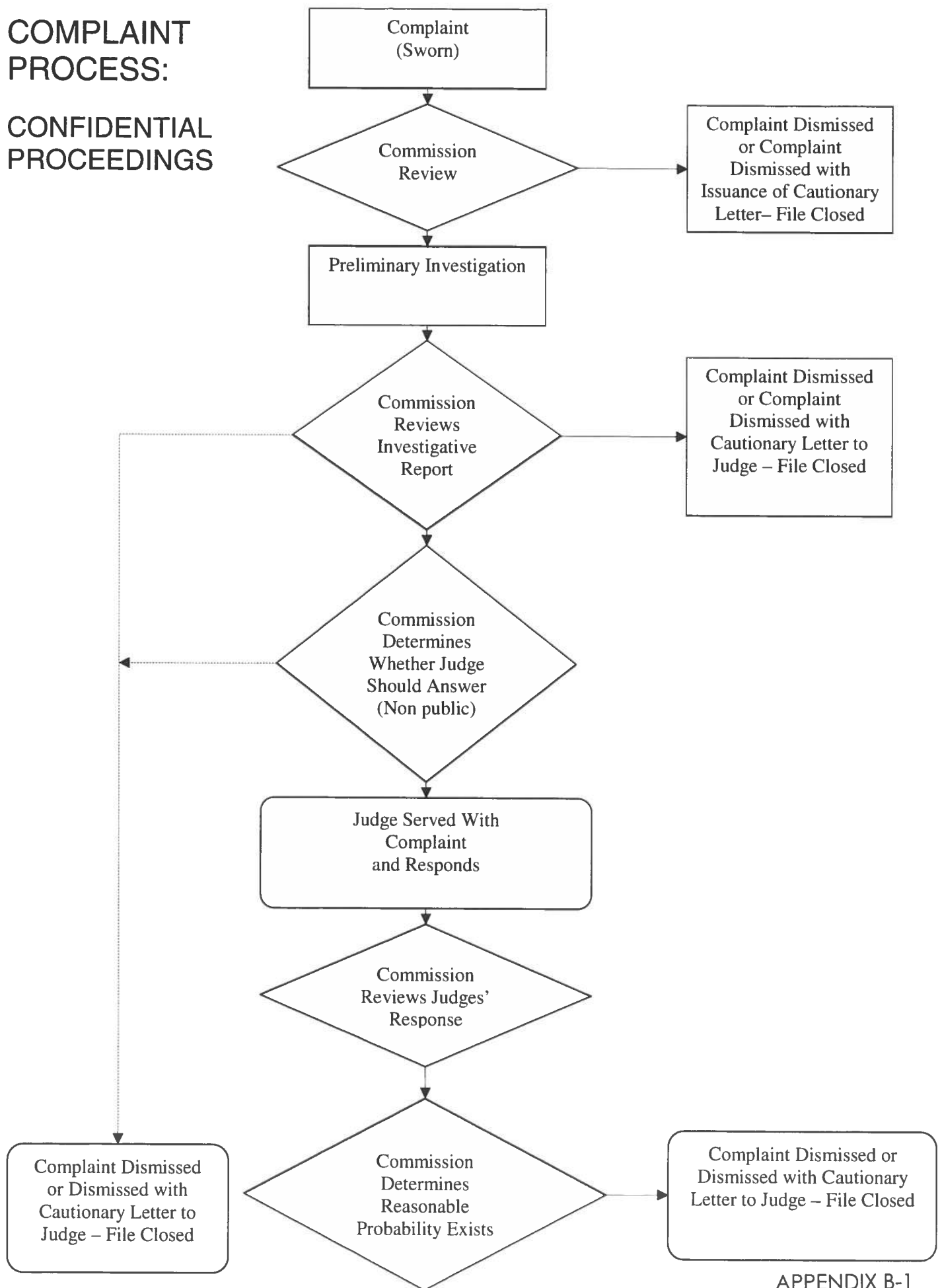
- ◆ Recent Developments

- ◆ Press Releases
- ◆ Disciplinary Complaint Deadline
- ◆ Public Hearing Schedules
- ◆ Non-Public Hearing Schedules
- ◆ Statistics

- ◆ Case References

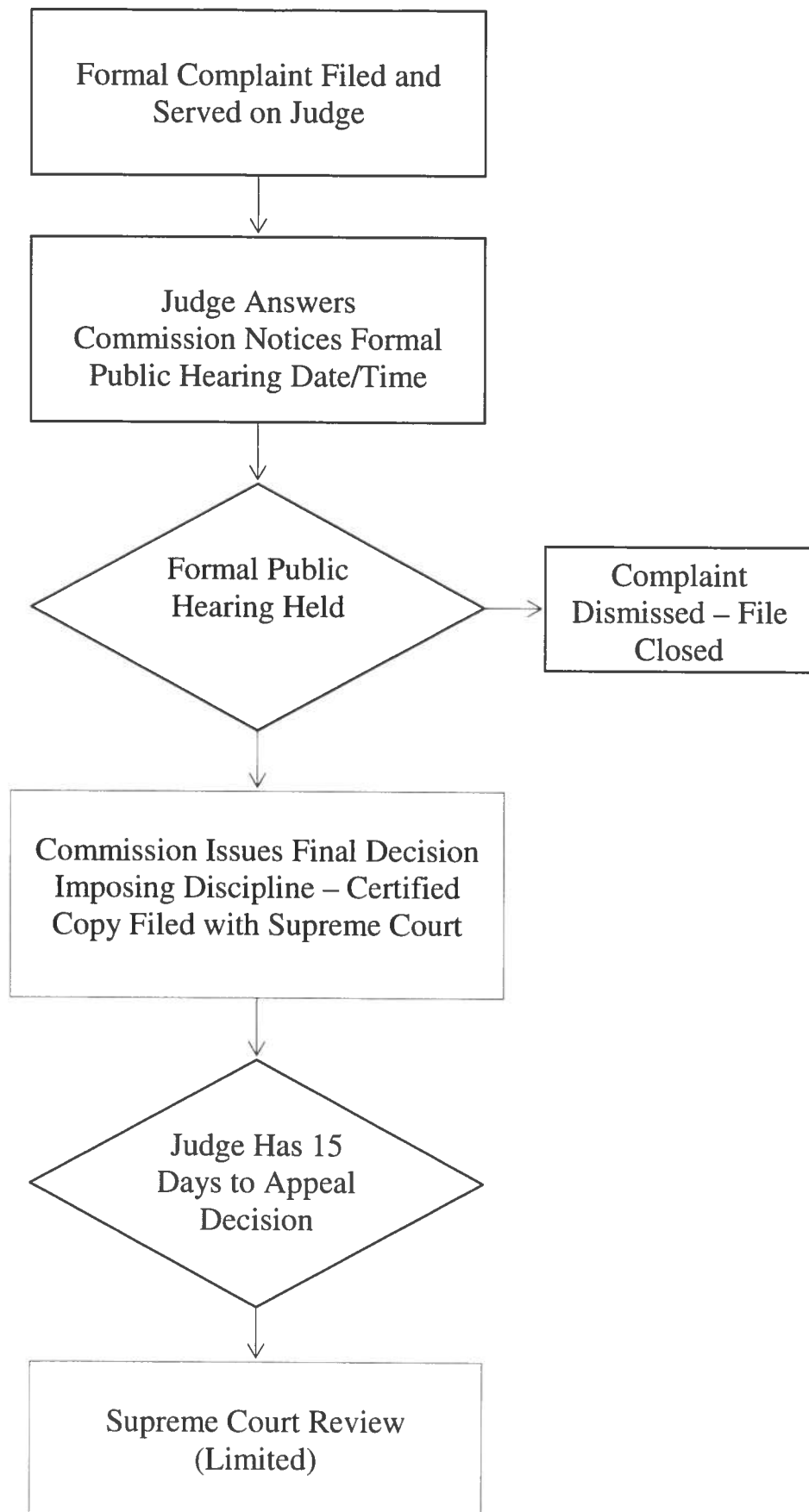
COMPLAINT PROCESS:

CONFIDENTIAL PROCEEDINGS



COMPLAINT PROCESS:

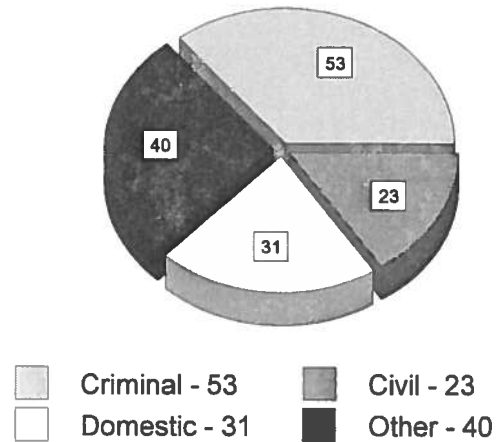
FORMAL PUBLIC PROCEEDINGS



TYPE OF COURT CASE UNDERLYING COMPLAINTS

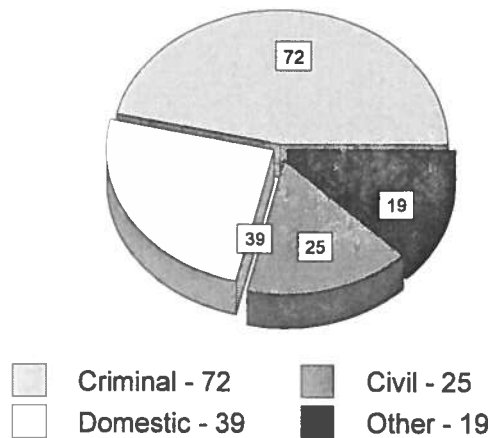
Fiscal Year 2012

Complaints Received - 147



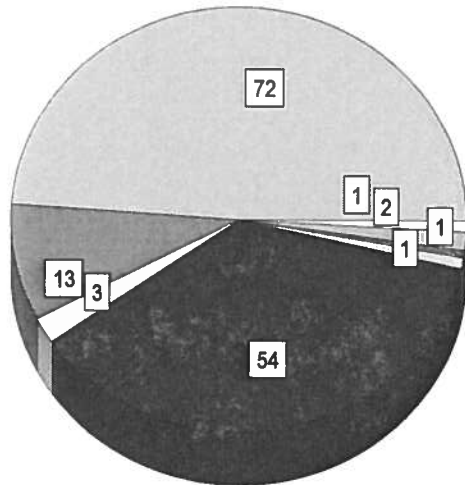
Fiscal Year 2013

Complaints Received - 155

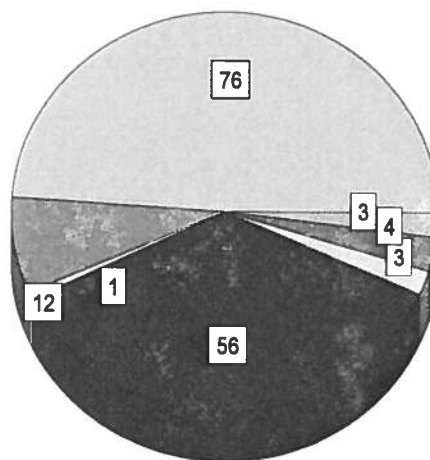


SOURCES OF COMPLAINTS¹

Fiscal Year 2012
Complaints Received - 147



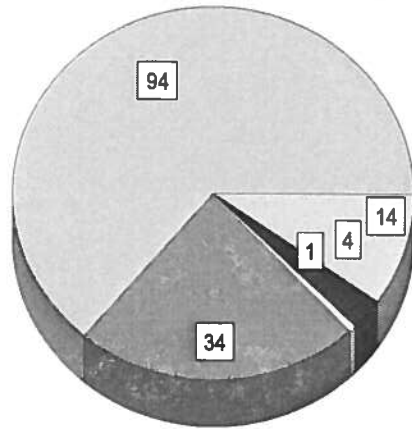
Fiscal Year 2013
Complaints Received - 155



¹Litigants – includes litigant's family and friends

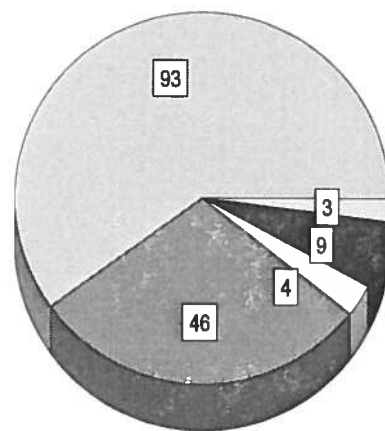
NEVADA JUDGES BY TYPE

**Types of Judges Complained Against
Fiscal Year 2012**



- General Jurisdiction Judges-94
- Limited Jurisdiction Judges-34
- Supreme Court Justices-1
- Masters/Commissioners/Referees-4
- Non-Judges-14

**Types of Judges Complained Against
Fiscal Year 2013**



- General Jurisdiction Judges-93
- Limited Jurisdiction Judges-46
- Supreme Court Justices-4
- Masters/Commissioners/Referees-9
- Non-Judges - 3

Fiscal Years 2012 and 2013 Number of Complaints Filed		
	Fiscal Year 2012	Fiscal Year 2013
First Quarter (July to Sept.)	31	39
Second Quarter (Oct. to Dec.)	51	27
Third Quarter (Jan. to March)	37	53
Fourth Quarter (April to June)	28	36
Total	147	155

Fiscal Years 2012 and 2013 Disposition of Cases								
	1 st Quarter FY 12	2 nd Quarter FY 12	3 rd Quarter FY 12	4 th Quarter FY 12	1 st Quarter FY 13	2 nd Quarter FY 13	3 rd Quarter FY 13	4 th Quarter FY 13
Dismissed w/o investigation ¹	23	25	34	27	5	7	2	33
<u>Investigated</u>	<u>3</u>	<u>7</u>	<u>6</u>	<u>8</u>	<u>2</u>	<u>7</u>	<u>4</u>	<u>4</u>
Dismissed after Investigation	0	2	2	3	0	9	3	4
Investigations Pending	14	19	20	23	17	22	14	12
Informal ² Resolution	1	3	4	2	0	1	0	0
Formal Hearing	0	0	1	0	0	1	1	0
New Cases Pending Commission Consideration								120

¹ Includes administrative dismissals against non-judges or federal court judges.

² Informal resolutions in FY 12-13, the judge was issued a letter of caution or private reprimand and/or appeared in front of Commission. Includes multiple cases against one judge concluded with letters of caution or appearing in front of Commission.

CASE DISPOSITIONS¹

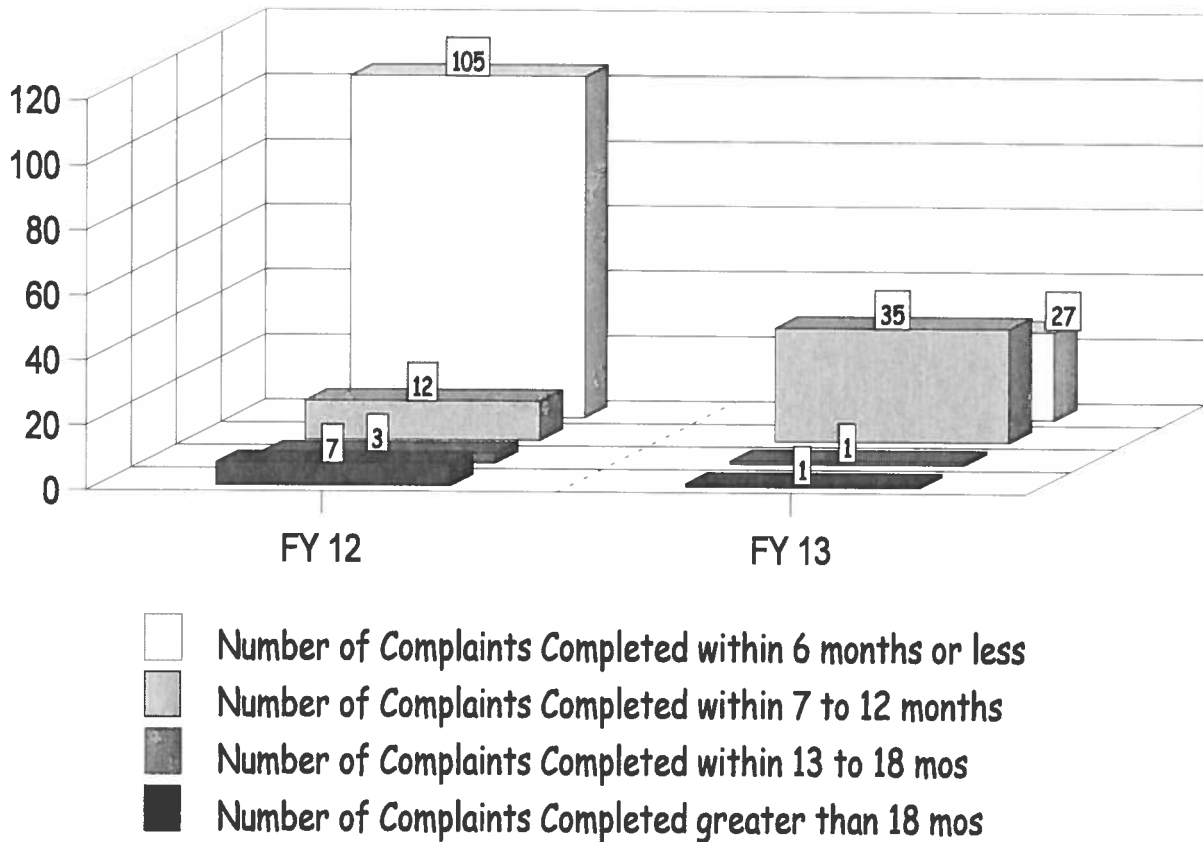
	FY 2011	FY 2012	FY 2013
Cases Dismissed after Initial Review ²			
Lack of jurisdiction	44	63	15
No Facts Stated	14	3	
Legal or appellate issues			
Frivolous	7		1
Insufficient Evidence	29	38	29
Conduct did not warrant Discipline	1		1
Withdrawn	1		
No Misconduct No Violation	8		1
Administrative Dismissal (Not judges)	3	14	4
No Longer a Judge			1
Moot		1	
Left the Bench while Proceedings Ongoing			
Cases Dismissed After Investigation No Action Taken ³			
No Facts Stated			
Conduct Did Not Warrant Discipline	3		4
Insufficient Evidence	13	11	10
No Misconduct No Violation			
Lack of Jurisdiction			
Stipulated Dismissal			
Moot	1		1
Frivolous			
Legal			
Left the Bench while Proceedings Ongoing	2		
Cases Dismissed with Issuance of Cautionary Letter	12	4	1
Private Meeting with Commission	2	2	
Private Reprimand	2	1	
Private Reprimand with Education	2	3	
Public Charges Dismissed			
Public Apology with or without Education			
Public Reprimand with or without education			1
Public Admonishment with or without education			1
Public Censure	1	1	
Interim Suspension			1
Removal			

¹Statistics are as accurate as possible due to shortage of staff and Executive Director retirement

²Some cases closed with more than one disposition.

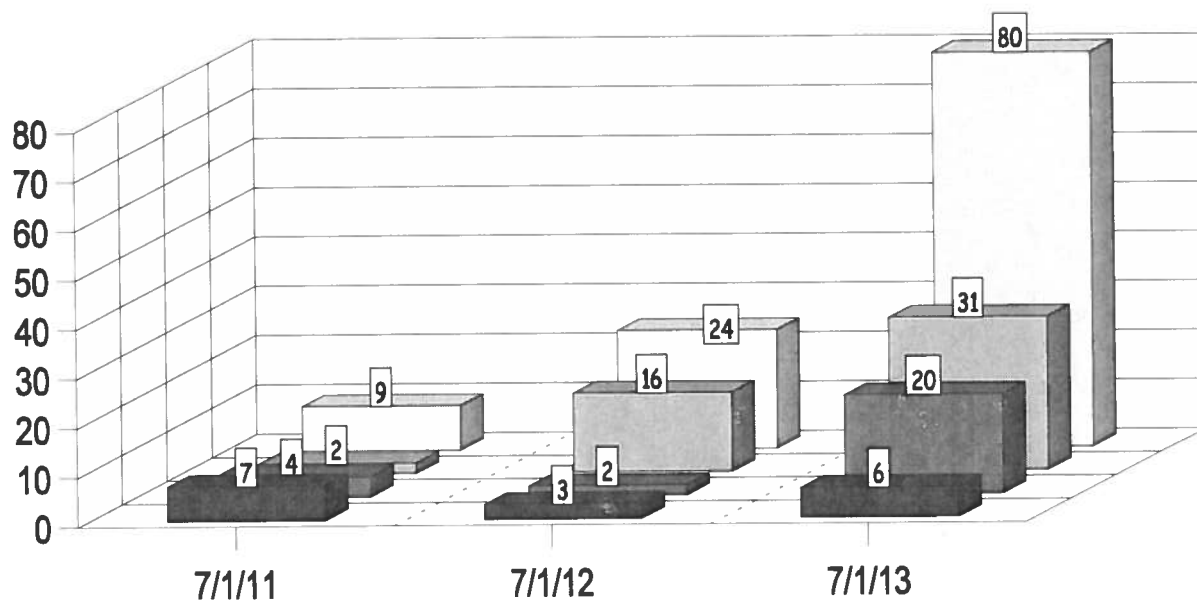
³See footnote 2 above.

NUMBER OF COMPLAINTS COMPLETED
DURING FISCAL YEARS 2012 AND 2013¹



¹See written portion of annual report for information regarding complaints closed beyond 18 months.

**NUMBER OF COMPLAINTS PENDING
BEGINNING FISCAL YEAR 2012 (July 1, 2011),**



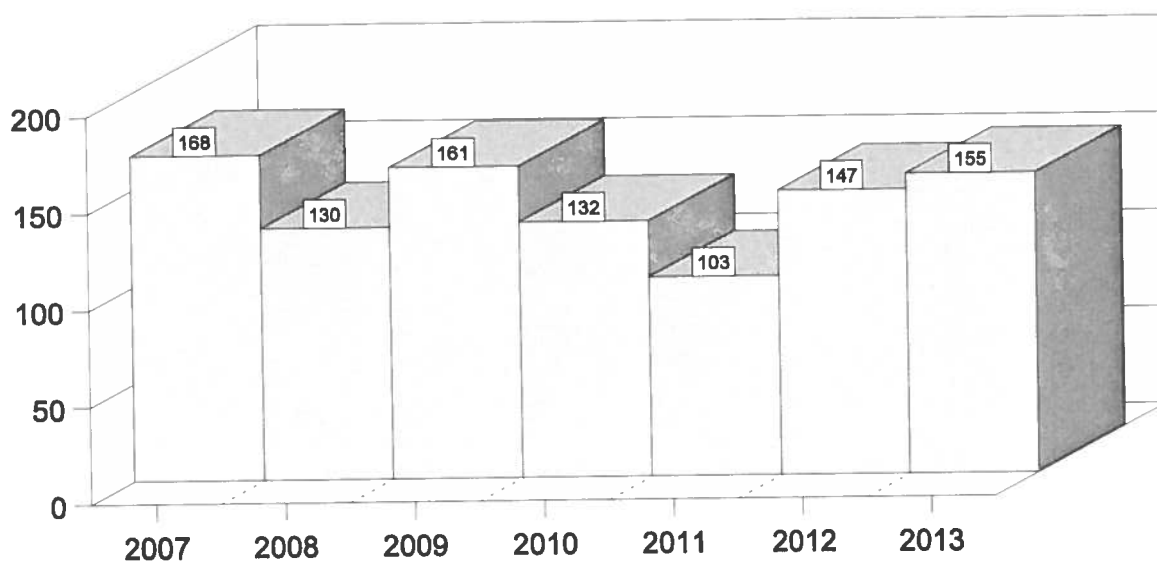
- Number of Complaints Pending for 6 months or less
- Number of Complaints pending for 7 to 12 months
- Number of Complaints pending for 13 to 18 mos
- Number of Complaints Pending longer than 18 mos

**BEGINNING FISCAL YEAR 2013 (July 1, 2012) AND
BEGINNING FISCAL YEAR 2014 (July 1, 2013)²**

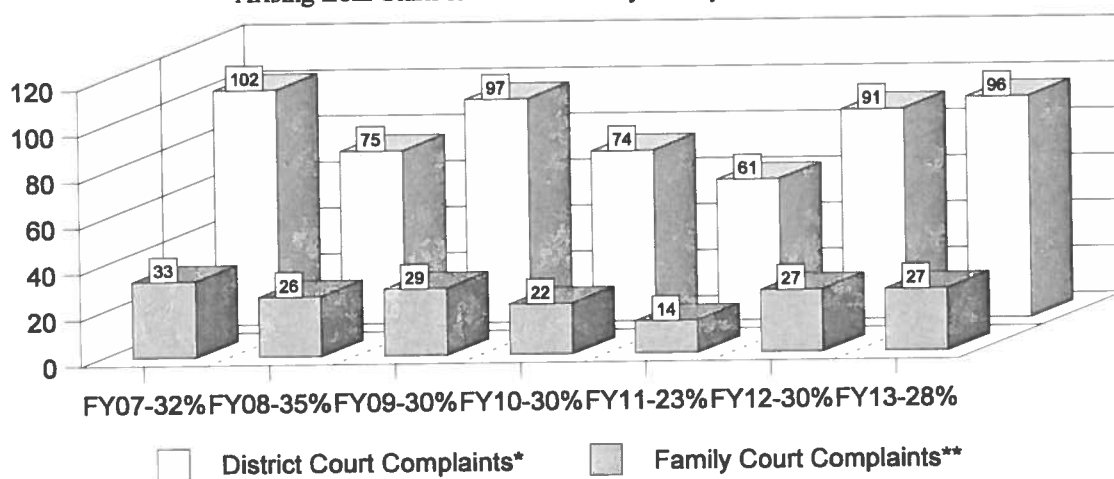
²See written portion of Commission Activities for further information on complaints pending for longer than 18 months.

Nevada Commission on Judicial Discipline
Statistics

Complaints Received Fiscal Years 2007-2013



Percent of District Court Complaints Arising from Clark or Washoe County Family Court

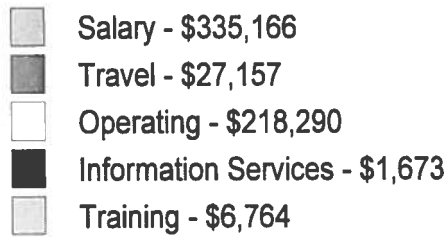
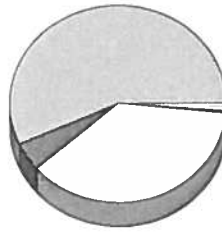


*Number of District Court complaints is a total received from all district courts in the State of Nevada

**Number of Family Court complaints is a total received only from Washoe and Clark County Family Court

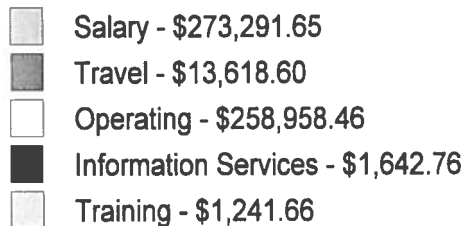
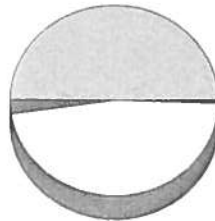
COMMISSION BUDGET

Legislatively Approved FY 2013 - \$589,050



COMMISSION BUDGET

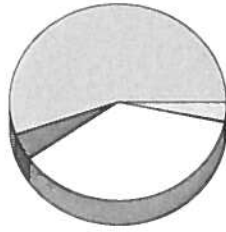
FY 2013 Actual* \$548,753.13



* Commission requested additional funds from Legislature for additional expenditures and expected payout for retirement of Executive Director who put off retirement next fiscal year

COMMISSION BUDGET

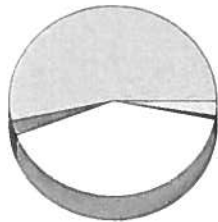
Legislatively Approved FY 2012 - \$595,738



Salary - \$329,576
Travel - \$27,217
Operating - \$219,193
Information Services - \$1,947
Training - \$17,805

COMMISSION BUDGET

FY 2012 Actual \$585,225.97



Salary - \$312,358.41
Travel - \$15,885.04
Operating - \$239,379.35
Information Services - \$4,273.02
Training - \$13,330.15