

# **NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

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## **STANDING COMMITTEE ON JUDICIAL ETHICS**



**2014 ANNUAL REPORT**

## 2014 ANNUAL REPORT

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## Introduction

Section 1.464 of the Nevada Revised Statutes directs the Nevada Commission on Judicial Discipline (the “Commission”) 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 processes with regard to judicial discipline, a description of the actions taken by the Commission during the fiscal year, and a list of the Commission members.

Included in this report is also a description of the Standing Committee on Judicial Ethics (the “Standing Committee”). The Standing Committee was created by the 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.

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 enable the Commission to perform its obligations more effectively and efficiently.

Much of the work of the Commission and the Standing Committee is reflected on the detailed website maintained by the staff. The website, found at <http://judicial.state.nv.us>, is divided into two parts, one for the Commission and one for the Standing Committee. The former provides extensive information as to

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the mission and processes of the Commission, including reference to the constitution, statutes, procedural rules and complaint forms. It also contains the Commission's disciplinary decisions, an index of the decisions, case references, and statistics, and other information. 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 a listing of current members. Accordingly, this report incorporates much of the information set forth on the Commission's website.

Respectfully submitted,

Paul C. Deyhle  
General Counsel and Executive Director  
Nevada Commission on Judicial Discipline

September, 2014

**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 Nevada Supreme Court adopts. Article 7 of the Constitution still provides for impeachment by the Legislature. The Nevada Supreme Court has referred to the Commission as a court of judicial performance.

The Legislature has also adopted sections 1.425-1.4695 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 has extensive 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.

**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 lay members can be of the same political party and they must reside in different counties. Alternates are appointed pursuant to the inherent power of the appointing authority pursuant to Nevada Supreme Court case law. The Chair and Vice-Chair are selected from the three primary lay appointees, by vote of the entire Commission. Current lay members are Chairman Doug Jones (Republican, Douglas County), Vice Chair Gary Vause (Democrat, Clark County), Mary Lau (Republican, Lyon 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

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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), Bruce Hahn (Reno), Don Christensen (alternate) (Reno) and Lawrence Irwin (alternate) (Las Vegas).

### **Process.**

Complaints are filed with the Clerk of the Commission. The Executive Director may 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 a letter

of caution (characterized under the rules as a “non-disciplinary event”). If the Commission determines that a judge has committed misconduct which 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 A for flow charts.

### **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. The Nevada Supreme Court defers to the Commission’s findings of fact and it determines if the record supports the findings. The Nevada Supreme Court conducts a de novo review of legal issues, including appropriateness of the punishment. The Nevada Supreme Court 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 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 date of 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, any period in which the judge has concealed or conspired to conceal evidence of misconduct 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.

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 sometimes 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 by telephone conference calls many times during the year to review complaints, to consider investigations, and to determine the 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). A public proceeding is held only when the Commission has made a finding 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 a judge.

During December of this fiscal year, a public case was heard and discipline imposed upon Judge Steven E. Jones ("Jones"), District Court Judge in the Family Court Division of the Eighth Judicial District Court. The Commission concluded that Jones had violated Rules 1.1 and 1.2 of Canon 1, Rules 2.4(B), 2.4(C), 2.2, 2.11 and 2.12 of Canon 2, and Rule 3.10 of Canon 3 of the Nevada Code of Judicial Discipline ("NCJC"). Discipline was imposed in January 2014 in the form of public censure and suspension of Jones' pay for a period of 3 months.

Judge Jones appealed the Commission's findings to the Nevada Supreme Court. Jones' opening brief has been filed with the Court and the Commission's answering brief is pending. On December 6, 2013, the Nevada Supreme Court dismissed Jones' Petition for Writ of Mandamus. Jones' Petition for Writ of Mandamus to stay the proceedings against him was denied on August 15, 2013. On October 30, 2013, Jones withdrew his appeal of the Eighth Judicial District Court's Order Granting Motion to Dismiss.

In a second matter concerning Judge Jones, a felony indictment was issued on October 24, 2012, in Las Vegas by a federal grand jury. Pursuant to NRS 1.4675, Jones has been suspended with pay pending outcome of the indictment. At this writing, the trial in this matter is set to begin September 30, 2014, however, the Commission is informed and believes that Judge Jones has come to an agreement on a guilty plea and has resigned his position as a District Court Judge.

The Commission closed a public proceeding concerning the conduct of District Court Judge Valorie Vega in August 2013. 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.

Also closed in the fiscal year was a matter concerning the conduct of former Municipal Court Judge Daniel Bauer for the Fernley Municipal Court in Lyon County. Former Judge Bauer was publicly reprimanded for violations of Canon 1, Rule 1.2 and Canon 3, Rule 3.1 (D) of the NCJC. The Commission concluded that Former Judge Bauer violated the NCJD when he conducted a traffic stop in Fernley utilizing a retiree badge issued to him as a retired Nevada Highway Patrol officer. Judge Bauer stated he was a retired police officer, seized the citizen's driver's license and directed her to follow him to a sheriff's substation and then to a convenience store where he identified himself as a judicial officer before returning her driver's license.

### **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 and 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 Rule 29. During the last fiscal year 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.

### **Cautionary Letters**

The Commission is authorized at several stages 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 and 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 letter of 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 fiscal year.

- The Commission issued a cautionary letter to a district court master for behavior which occurred outside of official duties.
- The Commission issued a cautionary letter to a district court judge regarding lack of attention to procedural rules and processes.
- The Commission issued a cautionary letter to a district court judge for ethical issues related to bench demeanor and treatment of lawyers and parties in the courtroom.

### **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 were over 315 judges, judicial officers and aspirants to judicial office in Nevada during this fiscal year. As this is an election year, this figure includes candidates to judicial office, but does not include pro tempore judicial officers. At this time there are 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/special masters and referees.

At the beginning of FY 2014, the Commission had a backlog of 137 pending cases, some of which dated back over two years. During FY 2014, the Commission received 196 new complaints, thereby increasing the total caseload being considered to 333 cases. The Commission processed to completion 183 cases, leaving 150 cases remaining open as of June 30, 2014.

Additional statistical information can be reviewed in Appendix B.

### **Budget and Staff**

The Legislature approved a budget of \$624,881 for Fiscal Year 2014. This amount included \$240,269 in operating funds. To cover the unprecedented costs of litigation and hearing costs, the Commission requested and was granted an additional amount of \$170,272 in operating expenses and an additional \$3,282 in operating system replacement expenses. Additionally, funds were reallocated from personnel, in-state travel and training categories to the Commission's operating category to pay these additional costs.

The Commission's staff consists of a newly appointed General Counsel and Executive Director, two full-time Management Analysts and one part-time Management Analyst. It contracts with attorneys and investigators as necessary. One of the full-time Management Analyst positions which had been left vacant was filled in November 2013. The recently hired part-time Management Analyst has moved to a full-time position, leaving the half-time position vacant.

The Executive Director is also responsible for the administrative duties of the Standing Committee on Judicial Ethics. The duties of the Standing Committee on Judicial Ethics are expected to be fulfilled by one of the full-time Management Analysts for the time being.

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FY 2014 has seen a substantial increase in the number of complaints filed. Additionally, a significant backlog of cases faced the recently appointed General Counsel and Executive Director and new staff members. The contentiously litigated Jones matter was heard publicly in December 2013 and discipline was imposed in January 2014. Judge Jones has appealed the Commission's decision and discipline to the Nevada Supreme Court. This litigation, along with five (5) other district and Nevada Supreme Court cases filed by Judge Jones severely impacted the Commission's burgeoning workload and further contributed to the backlog. In an effort to reduce the backlog and resolve the cases prior to the expiration of the Commission's 18-month time frame, the Interim General Counsel and Executive Director engaged the services of contract counsel.

Through the efforts of the current staff and contract counsel, the backlog has been substantially reduced. There are 58 FY 2014 and prior cases pending upon filing of this report.

During the Commission's search for a new Executive Director, the Commission hired an Interim General Counsel and Executive Director. The Interim General Counsel and Executive Director litigated the above-mentioned cases before both the Eighth Judicial District and the Nevada Supreme Court.

It should also be pointed out that the Commission consistently struggles with its budget and a bare-bones staff. In the past, the Commission has had to pare back necessary expenses and request that investigators and contract attorneys suspend their work until the new fiscal year as there were insufficient funds for payment. This seemingly endless shortfall of adequate funds and resources has led to a long-running and significant backlog of complaints and less than desirable attention to administrative matters. These backlogs will continue to occur as a result of bare-bones staffing, increased caseload, and the increasing prevalence of more complex cases. The associated delays attributable to these backlogs are unacceptable and wholly unresponsive to Nevada's citizens and judges whom the Commission serves.

Efforts to increase the Commission's responsiveness to Nevada's citizens and judges include restructuring of the office staff, technological improvements and building a realistic budget which not only reflects the Commission's actual operating costs, but will also enable the Commission to carry out its constitutional and statutory mandates more effectively and efficiently. Additionally, the Commission has proposed legislative changes which, if enacted, would allow it to draw from the Statutory Contingency Fund when the need arises, rather than engaging in the long process of requesting funds from the Interim Finance

Committee, or suspending operations, as has been done in the past. Unlike requests to the Interim Finance Committee, which can take upwards of three months to complete, requests from the Statutory Contingency Fund have a much shorter turn-around time allowing the Commission to continue processing cases and paying its bills in a timely manner.

The Commission is also seeking changes in legislation which, if enacted, will allow the Commission to seek reimbursement of attorney's fees and costs under certain circumstances which will be returned to the state treasury.

See Appendix C for budget chart.

### **Current 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.

*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 has turned the matter over to the Controller's office for collection of the debt.

*Arpino v. Edwards, et al.*, Nevada Supreme Court Case No. 65929. The Commission was served with a Subpoena Duces Tecum filed by prisoner John F. Arpino in First Judicial District Court Case No. 13-TRT000801B on March 31, 2014. A non-party Motion to Quash was filed, followed by an objection and reply. A Request for Submission was filed and while waiting for submission, venue was changed to the Second Judicial District Court and assigned Case No. CV14-01321, Department 6. The Request for Submission was re-filed and, while waiting for a decision, Arpino appealed the change of venue to the Nevada Supreme Court. The disposition of the Motion to Quash is pending.

### III. Commission Members

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.  
Bruce Hahn, Esq.  
Honorable Mark R. Denton  
Mr. Doug Jones, Chairman  
Ms. Mary Lau  
Honorable Jerome Polaha  
Mr. Gary Vause, Vice Chairman

#### Alternate Commission Members

Honorable Leon Aberasturi  
Honorable Rodney T. Burr  
Honorable Patricia "Pat" Calton  
Mr. Clifford Cichowlaz  
Ms. JoAnn Elston  
Donald L. Christensen, Esq.  
Larry Irwin, Esq.  
Honorable Patricia Lynch  
Honorable Janiece Marshall  
Honorable Richard Wagner

### 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-Chair. The current Chairman is Michael Pagni, Esq. (McDonald Carano Wilson, LLP) and the current Vice-Chair is Janette Bloom, Esq., (Marshall Bloom). The officers are appointed by

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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 Management Analyst 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-Chair 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 Nevada 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. Recent Developments
- h. Biographies of Standing Committee Members and Staff
- i. Interested in Becoming a Member of the Standing Committee
- j. 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 2014 - Advisory Opinions

The Committee issued six (6) opinions during fiscal year 2014.

**JE13-004** May a court employee such as the Court Administrator serve as a pro tempore judge in a justice or municipal court? **Note: This opinion was originally filed August 28, 2013, and was amended and re-issued on November 19, 2013, to correct an incorrect cite.**

**JE13-005** May a Nevada judge accept an appointment to serve on the board of directors of a non-profit organization that works to improve the quality of healthcare in Nevada?

**JE13-006** May a retired judge still actively serving as a senior judge agree to have his name listed on an invitation to a fund raising event hosted by a nonprofit to raise money for an at-risk youth center named in honor of the judge?

**JE14-001** May an elected limited jurisdiction judge serve as a special master or pro tempore judge in another court?

**JE14-002** May a district court purchase and use case law search engine software created, managed and provided for profit by an attorney who practices before the same court?

**JE14-003** Is a judge engaging in extrajudicial activities within the context of Canon 3 when serving as an officer of the United States Air Force Reserve, regardless of the particular assignment?

## **VI. Members of the Standing Committee on Judicial Ethics**

The members of the Standing Committee are a dedicated group of individuals who volunteer their time and answer important judicial ethics questions. Judges and judicial aspirants frequently request informal and formal guidance in the form of requests for advisory opinions. 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 Mason E. Simons  
Elko Township Justice Court

Honorable Ann Zimmerman  
Las Vegas Justice Court

**Attorney Members**

Janette Bloom, Esq.  
Vice-Chair

Bill C. Hammer, Esq.  
Hammer & Associates

Christopher Cannon, Esq.  
Olson Cannon Gormely Angulo  
& Stoberski

Patricia Halstead, Esq.  
Halstead Law Offices

Paul Connaghan, Esq.  
Connaghan Newberry Law Firm

Robert D. Martin, Esq.  
Martin & Allison

Frank Toddre, II, Esq.  
Lewis Brisbois Bisgaard & Smith

Michael A.T. Pagni, Esq., Chair  
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, Inc.

Kenneth Gray  
Project Coordinator  
HealthInsight

Steve Chappell  
Casino Executive

Fely Quitevis  
Realtor

Donna L. Coleman  
Children's Advocate

Robert Sulliman  
Director of Security, Alarmco

Cindy Creighton  
Executive Director  
Nevada Subcontractors Association

Sarah "Sally" Zola  
Paralegal

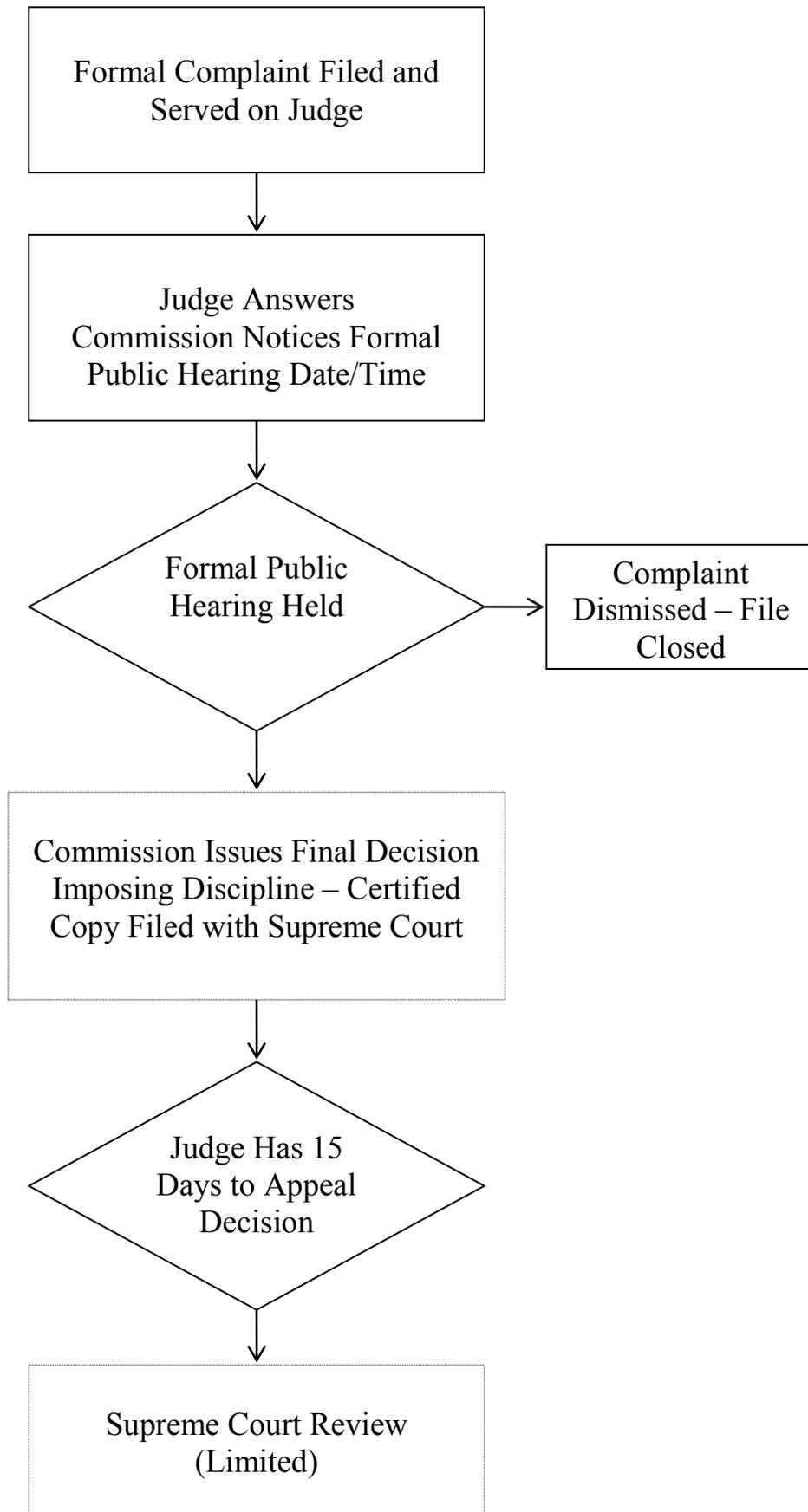
William E. Dougan, M.D.  
Retired Physician

Yvonne L. Murphy  
Lobbyist

APPENDIX A

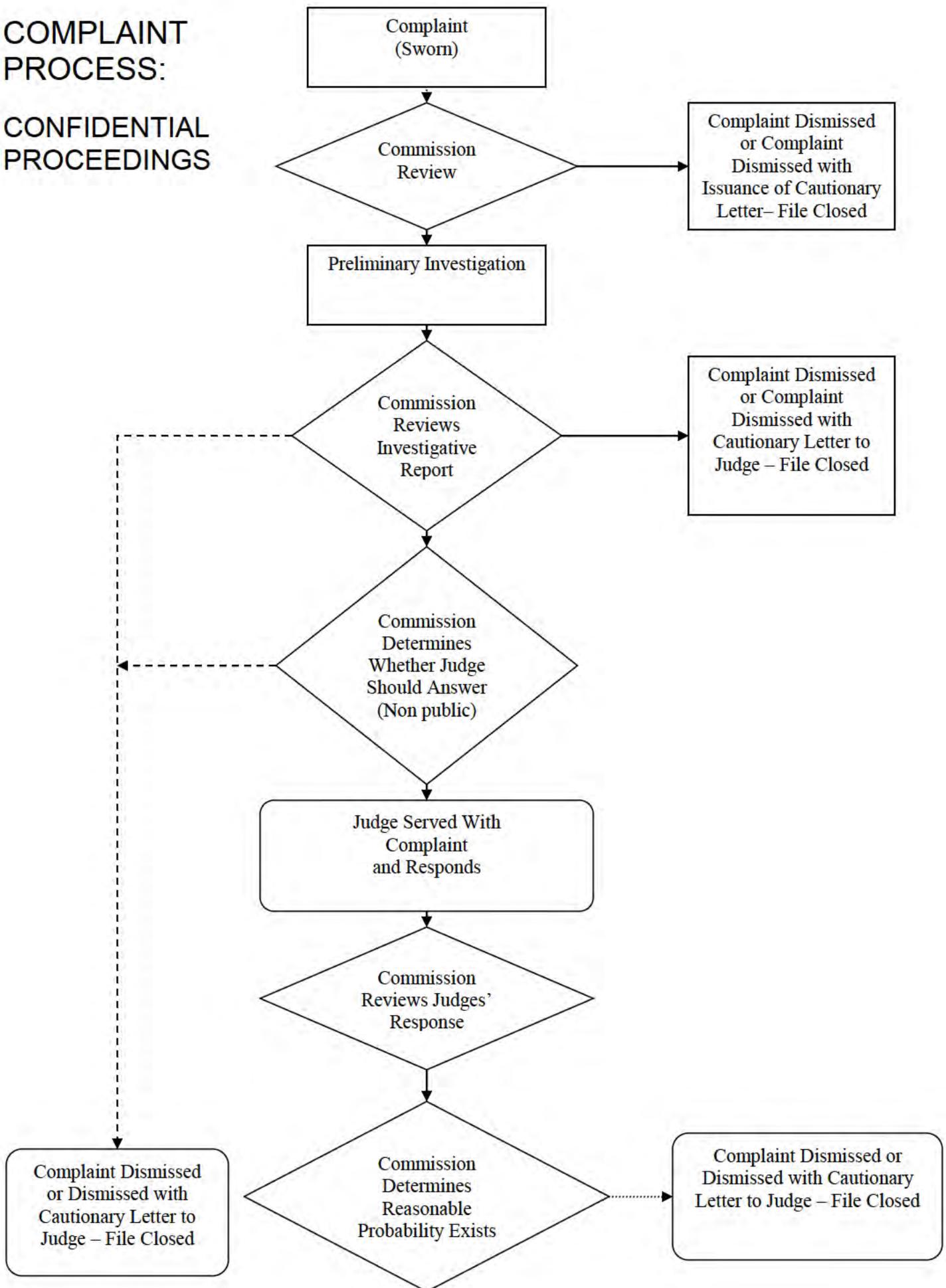
COMPLAINT  
PROCESS:

FORMAL  
PUBLIC  
PROCEEDINGS



# COMPLAINT PROCESS:

## CONFIDENTIAL PROCEEDINGS



APPENDIX B

**CASE DISPOSITIONS  
FISCAL YEAR 2014**

<b>Disposition</b>	<b>Number</b>
Dismissed after initial review <sup>1</sup>	152
Dismissed after investigation - no action taken	17
Dismissed with cautionary letter	3
Informal discipline <sup>2</sup>	6
Public charges dismissed	0
Public reprimand	2
Public censure	2
Suspension <sup>3</sup>	1
Removal	0
<b>Total</b>	<b>183</b>

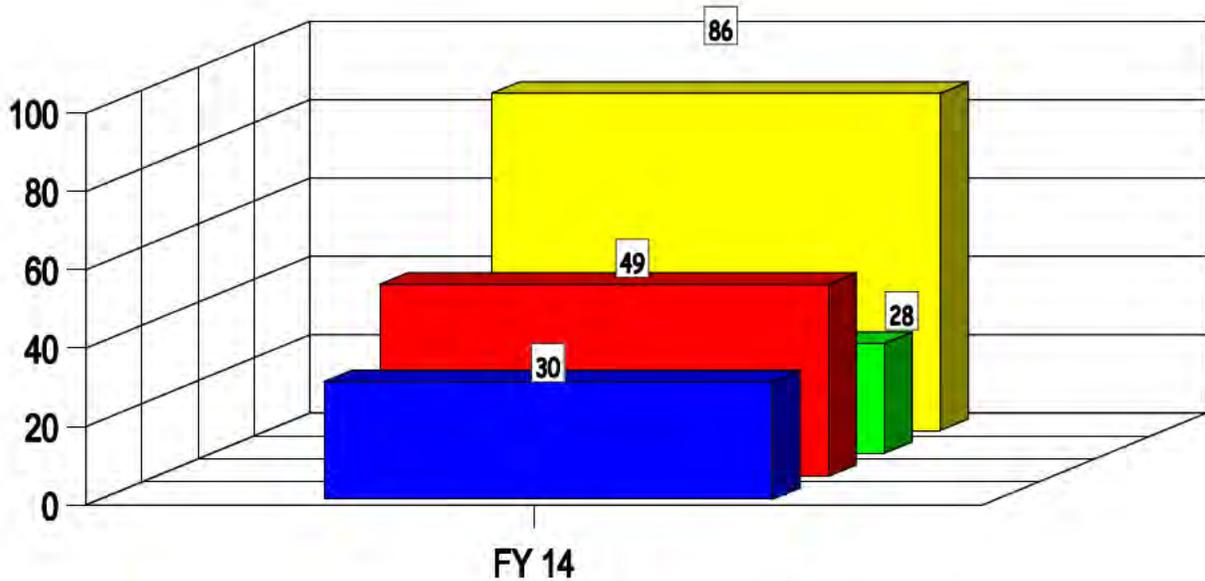
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<sup>1</sup>Includes cases dismissed administratively prior to Commission review

<sup>2</sup>Includes private reprimand or deferred discipline agreement

<sup>3</sup>Includes suspension with and without pay

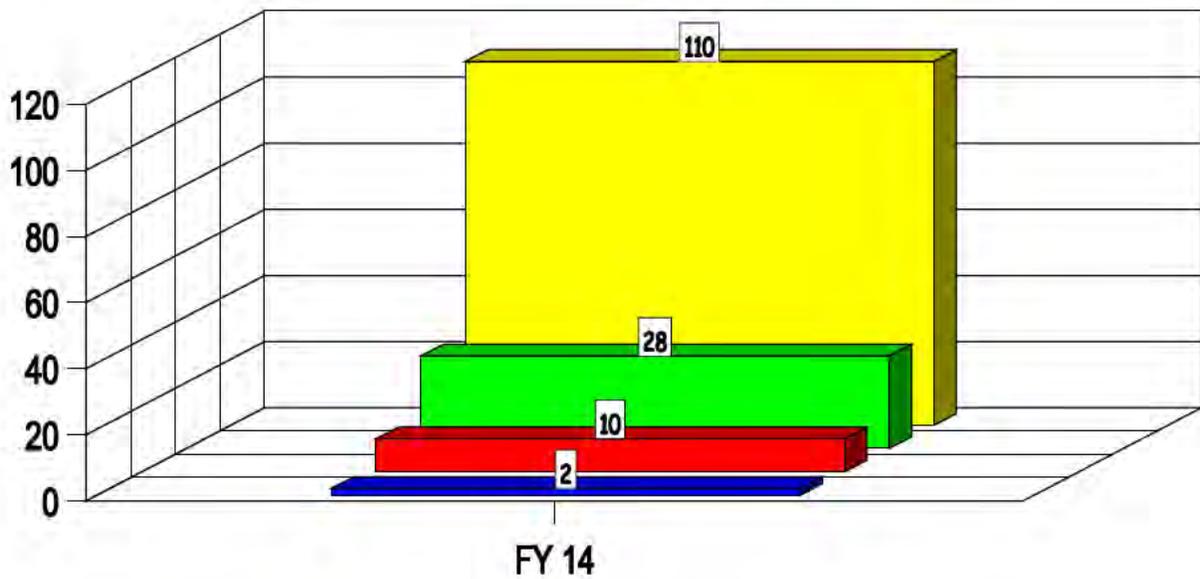
NUMBER OF COMPLAINTS COMPLETED  
DURING FISCAL YEAR 2014



- Number of Complaints Completed within 6 months or less**
- Number of Complaints Completed within 7 to 12 months**
- Number of Complaints Completed within 13 to 18 mos**
- Number of Complaints Completed greater than 18 mos**

Note: The number of complaints completed which were older than 18 months includes a significant number of cases from prior fiscal years.

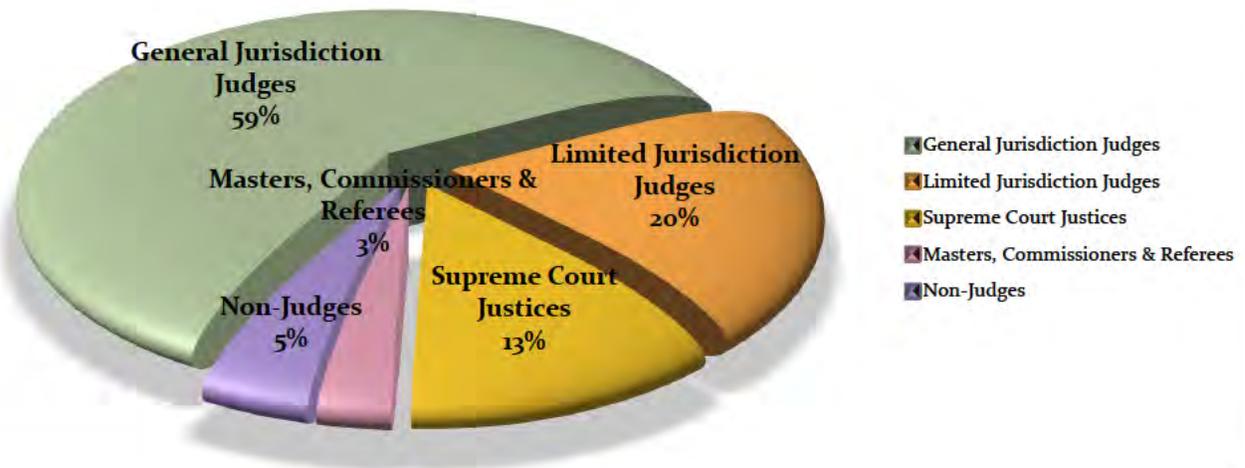
NUMBER OF COMPLAINTS PENDING  
ENDING OF FISCAL YEAR 2014 (June 30, 2014)



- 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

Category	Number of Complaints
General Jurisdiction Judges	116
Limited Jurisdiction Judges	39
Supreme Court Justices	26
Masters, Commissioners & Referees	6
Non-Judges	9
<b>Total</b>	<b>196</b>

### Types of Judges Complained Against FY 2014



APPENDIX C

Category	Amount
Salaries	\$ 352,857
Travel	\$ 15,725
Operating	\$ 240,269
Information Services	\$ 2,592
Training	\$ 13,329
<b>Total</b>	<b>\$ 624,881</b>

### Commission Budget Legislatively Approved FY 2014

