

COMMISSION ON JUDICIAL CONDUCT
STRATEGIC PLAN, Fiscal Years 2009 - 2014

As of June 3, 2008

AGENCY OVERVIEW

The Commission on Judicial Conduct is an independent agency of the judicial branch of government. Created under the Washington Constitution, the function of the Commission is to investigate complaints and to act on substantiated instances of judicial misconduct or disability. The Code of Judicial Conduct, adopted by the State Supreme Court, supplies the basis for finding judicial misconduct. Where misconduct is found, the Commission may impose admonishment, reprimand, or censure. After imposing censure, the Commission may recommend suspension or removal of a judge to the Supreme Court. To act on a complaint of disability, the Commission must find that a judge or justice suffers from a disability which is permanent or likely to become permanent, and which seriously interferes with the performance of judicial duties. If the Commission finds disability, it may recommend to the Supreme Court that a judge be retired. For a more detailed description of the Commission's work, see the final section of this Strategic Plan entitled "Program Description."

AGENCY MISSION

The Commission on Judicial Conduct's mission is to help maintain the integrity, independence, and public confidence in the Washington state judiciary and to hold Washington judicial officers and state judicial branch employees publicly accountable for their proven ethical misconduct.

STATUTORY AUTHORITY

The Commission on Judicial Conduct is authorized by Article IV, Section 31, of the Washington State Constitution, and by Chapter 2.64 of the Revised Code of Washington ("RCW"). The Commission's mandate is to enforce the Code of Judicial Conduct, adopted by the Washington Supreme Court, against Washington judicial officers.

The Commission is also authorized by the Ethics in Public Service Act, Chapter 42.52 RCW, to investigate, hear and determine complaints and impose sanctions under that act as to state-level employees of the judicial branch of state government.

GOALS

The goal of the Commission on Judicial Conduct is to achieve the appropriate, impartial, efficient and timely review, confidential investigation, and public prosecution and adjudication of complaints of alleged ethical misconduct by, or disability of Washington judicial officers and certain state judicial branch employees and to inform the public and judicial officers about the

Commission's public activities. The Commission also conducts outreach to educate the judiciary and the public about the ideals the Code of Judicial Conduct establishes to achieve an independent, fair and competent judiciary. As stated in the Preamble to the Code: "Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law."

OBJECTIVES AND PERFORMANCE MEASURES

The timely and thorough processing of complaints against judicial officers directly affects the public's perception of judicial integrity and independence and its confidence in the judicial system. The following objectives are thus intended to assist in reaching Commission goals.

- Investigate and close seventy percent of new complaints within six months.
- Provide the public current information about the Commission's public activities.
- Participate in educational outreach to the bench, bar, court staff, and general public about judicial ethics.

Factors that may adversely affect the Commission's ability to meet its objectives include the receipt of more, or of more complex, complaints than anticipated; complainants who require unusually large amounts of time; the litigation tactics of respondent judges and their counsel; the number, complexity and duration of public hearings; and any reduction in resources available to the Commission, including unexpected or increased member or staff turnover.

STRATEGIES

The methods the Commission employs to assure that it meets its objectives of timely conducting and completing its investigations include the prompt acknowledgment of receipt and processing of complaints, the use of internal time-tables and docketing of investigations, the regular periodic review of the timeliness of complaint responses and investigations, frequent transmission of materials to Commission members, and bi-monthly Commission meetings. Timeliness of complaint processing at any given time is usually dependent on the number and complexity of complaints, investigations and prosecutions being processed.

To provide the public with current information about the Commission's public activities, the Commission promptly issues widely-distributed press releases as to its public disciplinary actions, promptly responds to written and oral public inquiries, issues annual reports, and, on an on-going basis, maintains an extensive Internet website with information about the Commission and its public activities. The Commission also conducts training and outreach to the bench, bar and public.

RELATIONSHIP OF STRATEGIC PLAN TO EXPECTED STATEWIDE RESULTS

The Commission's mission, objectives and strategies contribute to producing the results expected of state government by the public.

Through its investigative, prosecutorial and adjudicatory activities, the Commission seeks to maintain confidence and integrity in the judicial system. The judicial system is our society's official forum for resolving disputes and for protecting the interests of the minority and of the vulnerable. If the public lacks confidence in the judicial system, it will not support or voluntarily utilize it to resolve disputes and may instead resort to socially unacceptable forms of dispute resolution, including self-help and violence, and thus undermine the rule of law needed for a just and secure society. Both individuals and business entities need neutral forums in which they have confidence to resolve their disputes in a socially approved manner. For the public to have confidence in the judicial system, the public must believe that the state's judicial officers will fairly, impartially, timely and competently resolve disputes. Individuals and business entities must have confidence in the integrity and independence of judicial resolution of their disputes, to justify and sustain investment in this state. If they disagree with the judicial officer's legal decision, they may appeal the decision to a higher level court; but if they believe the judge acted unethically by, for example, being biased or prejudiced or incompetent, or by not providing them a fair hearing, they must have someone independent of the judicial officers and courts to whom they can, without fear of retaliation, complain and who can impartially review their concerns and take appropriate action to hold the judicial officer publicly accountable. The Commission serves that essential role.

Judicial officers are often subjected to baseless complaints. They and the public need someone outside the court system to impartially review all complaints against judicial officers, filter out those that are frivolous, misinformed, or misguided, and, if the complaint has merit, accord the judicial officer due process in any disciplinary proceedings. The Commission, being an independent agency in the judicial branch of government, reviews complaints confidentially as mandated by the State Constitution. It is thereby able to do its work without compromising the judge's impartiality and, in addition, saves judicial officers from expending valuable judicial resources dealing with baseless complaints rather than on needed judicial duties. This also helps protect judicial independence from inappropriate public pressure and clamor.

By accomplishing its mission of maintaining the public confidence in the integrity and independence of the Washington state judiciary as a trusted dispute resolution forum, and by holding judicial officers publicly accountable for their ethical misconduct, the Commission helps meet the public's expectation that state government, through the judicial system, should improve the security of Washington's vulnerable children and adults, should improve the safety of people and property, and should improve the economic vitality of businesses and individuals. Through the careful, impartial and efficient evaluation of complaints, and through the timely completion of investigations and public proceedings, the Commission helps meet the public's expectation that state government should achieve its results efficiently and effectively.

APPRAISAL OF EXTERNAL ENVIRONMENT

Factors which increase or reduce the activity and caseload in Washington's judicial system tend to increase or reduce the number of complaints before the Commission. In short, more litigation in the courts usually results in more complaints filed with the Commission. Increases or decreases in the number of judicial officers, including part-time judges and pro tempore judges, similarly affect the number of complaints sent to the Commission. In addition, public disciplinary actions by the Commission, and cases of questioned judicial conduct which are widely covered in the media, tend to sharply increase the number of complaints filed with the Commission and thereby increase the Commission's workload. While the sharp increase is thought to be temporary in nature, there is also a long-term general trend of an increasing number of complaints being filed. As Washington's population grows and becomes more litigious, more complaints will likely be filed with the Commission.

The largest variable and uncertainty in the Commission's workload and budget is the number and complexity of complaints appropriate for Commission action and of resultant cases that require significant staff or Commission member involvement. These include cases involving complex factual or legal issues, and cases wherein settlement agreements are negotiated or public disciplinary hearings are held. The Commission's budgeted resources are stretched very thin when more than a very small number of such cases occur at the same time. When this happens, resources must be devoted to those specific cases and other investigations and cases are delayed. Further, the Commission's costs for such cases are very significantly affected by such factors as the complexity of the facts or issues involved, the seriousness of the alleged misconduct, the litigation tactics, personality and strategy of the opposing side, and by other matters over which the Commission has no control.

Events such as 9/11 and natural disasters in sister states have highlighted the need for reliable, easily-accessible backup of the Commission's confidential and administrative files. This agency's unusually stringent confidentiality requirements make the shared use of database resource technology with other agencies impossible. Consequently, software specific to the agency's needs has been designed. The CJC is undertaking an ongoing program of digital and microfiche storage of essential files. The development of more efficient scanning processes allows the Commission to undertake increased digital transmission of confidential materials to our commission members around the state and results in less paperwork and postage costs, consistent with the agency's sustainability goals.

For a discussion of the Commission's financial health as impacted by legislative action, see "Financial Health Assessment," below.

TRENDS IN CUSTOMER CHARACTERISTICS

Anyone may file a complaint with the Commission against a state judicial officer or state judicial

branch employee. The Commission receives complaints against judicial officers from lawyers, litigants, other judges, court personnel, citizen observers, and public officials. The State Constitution gives the Commission authority to generate complaints itself. Nearly 75% of the complainants are litigants, while the next largest group of complainants are non-litigating citizens. Usually about 35% of the complaints arise from criminal matters, and about 37% of the complaints come from general civil and domestic relations matters. Complaints involve all levels of state courts. These groupings are generally consistent over the years. As with the number of judges in the state, the long-term trend is that the number of complaints is generally increasing. Likewise, the service provided to the "client" groups - judges and complainants -- is generally trending upwards.

To better serve judges, interested persons and the public generally, the Commission has over the last several years increased public access over the Internet to information such as applicable laws, recent Commission decisions, and current public proceedings. The Commission has created, as part of its Internet website, a searchable database of its public disciplinary actions since inception of the Commission. The new database significantly increased the amount of public judicial disciplinary information, both current and historical, which is readily available to the public and, in keeping with the agency sustainability goals, decreased the cost of providing such information by mail.

PERFORMANCE ASSESSMENT

The Commission seeks to conduct its operations impartially, competently, promptly and efficiently. Specifically, as discussed above under "Objectives," it seeks to investigate and close seventy percent of its complaint investigations within six months of when the complaint was filed.

The Commission is able to meet its numerical objectives most effectively during time periods when there are no public disciplinary hearings which consume unusually large amounts of staff time and resources. With a small staff to handle both investigations and litigation, closing rates usually decline, and the inventory of pending complaints usually increases, when the Commission has active complex investigations or on-going litigation, and conversely, closing rates usually increase and inventory declines when the Commission does not have such investigations or litigation.

The Commission is the only Washington state agency responsible for investigating and prosecuting alleged judicial ethical misconduct. Thus, the constitutional, statutory and regulatory provisions governing it are unique to it. There are no other Washington agencies similar enough with which to appropriately compare performance. While agencies with similar missions exist in other states, comparison of closing times has little value since each agency has its own unique structure, staffing and resource allocations, each is governed by unique constitutional, statutory and regulatory provisions and procedures, and each has its own priorities. From informal contacts with other agencies, however, it is believed that the Commission's investigative closing

times are similar to those of other jurisdictions. Nevertheless, closing times may seem unduly long to the public wanting to resolve matters that are important and urgent to the complainant. Investigation times can be responsibly reduced without loss of quality only by the addition of another investigative officer and support infrastructure.

FINANCIAL HEALTH ASSESSMENT

The Commission is wholly funded and dependent on legislative appropriations from the State's General Fund. The Commission has no independent source of funding. On occasion, the Commission has also had to rely on emergency appropriations from the Governor, particularly to cover unpredictable costs of significant litigation, when appropriated sums were insufficient to handle actual costs without undermining the Commission's ability to perform its core functions. Given the purpose of the Commission to assure judicial integrity and public confidence in the court system, user fees on persons filing complaints would not be appropriate, nor would assessment of costs be practical or efficient since only a small fraction of complaints ultimately leads to findings of unethical judicial misconduct.

Since the Commission is a very small agency, any diminution of its funding directly reduces its ability to accomplish its mission and core functions of timely investigating and prosecuting alleged judicial misconduct. For an agency with state-wide jurisdiction and only one office, investigation necessarily involves telephone, travel and equipment expenses. Travel expenses are also regularly and necessarily incurred since the Commission's 11 members and 11 alternate members come from all parts of the state to conduct Commission business. To economically and efficiently handle its variable amount of litigation, the Commission has traditionally hired outside disciplinary counsel through personal service contracts. Blanket state government-wide budget expenditure reductions, such as for travel, equipment, and personal-service contracts, directly reduce the Commission's ability to perform core functions critical to its mission, and cause severe and disproportionate adverse effects on small agencies such as the Commission.

The current funding of Commission activities does not fully account for caseload variations and case complexity from fiscal period to fiscal period. A substantial increase in the number of complaints and inquiries affects the timely investigation of complaints. Additionally, the complexities which might arise in a particular case cannot be anticipated in a specific, future budget period. Historically, the Commission's maintenance level funding has not always met its funding needs and thus, requests for additional future funding from time to time, and reversion of some funds at other times, should be anticipated, depending on the factors outlined above.

With respect to Commission workload, the Commission has had a steady annual increase in the number of complaints and inquiries filed with it since it was founded in 1981. In 1981 it received 72 complaints and inquiries. Over the last ten years, the agency has received an average of 987 complaints and inquiries each year. For the first four months of 2008, the agency has already received 355 complaints and inquiries, so the numbers have trended upwards.

The Commission will continue to need at least the current authorized maintenance level of FTEs (9.5, which includes the part-time compensation payments made to the eligible Commission members and alternate members) for its work. The current inventory of work is very challenging with the present staffing level; however, as discussed above, if the number and complexity of complaints and complex investigations and prosecutions continue to rise, or if investigative timeliness is to be improved, then increased staff levels (probably one FTE investigative officer) will be needed for the Commission to continue to accomplish its mission.

The Commission is currently working with the Department of General Administration to locate appropriate new office space and to plan needed tenant improvements. A projected relocation date of its office in November of 2009 is necessitated by the planned demolition of the current location in 2010. We understand from the coordinators of the relocation that it is highly unlikely that we can find new space that meets our needs at the same low cost as our current location. In addition, we will incur moving expenses in the relocation process.

COST REDUCTION STRATEGIES

The Commission, a very small agency with limited funds and a specialized mission requiring particular training, has a long history of wise fiscal frugality.

Staff retention is an important cost-reduction strategy for a very small agency where loss of any staff member severely impacts the agency's ability to conduct its business and where an investigative staff vacancy necessarily delays investigations. The work of the Commission is highly specialized and demands staff possessed of superior analytical ability, scrupulous ethics and reliability. The Commission avoids significant recruiting and training costs by valuing its staff and prioritizing staff retention. Doing so allows it to economically and efficiently conduct its work.

The Commission historically has not had sufficient on-going litigation on a regular basis to justify the cost of hiring staff specifically to handle that litigation, and doing so might require costly work restructuring to assure clear separation of prosecutorial and adjudicative functions. Instead, the Commission retains outside disciplinary counsel on personal service contracts to represent it in litigation. Such counsel, as part of their dedication to serving the public, have regularly agreed to below-market compensation for their services to the Commission, thus resulting in substantial cost savings to the Commission. Of course, because litigation is expensive even at reduced rates, where the Commission can fully accomplish its objectives through negotiated or stipulated resolutions instead of litigation, it regularly does so.

Where Commission investigatory and adjudicatory business can reasonably be conducted by telephone rather than through travel and in-person meetings, the Commission does so, thus saving substantial travel expenses and allowing the work to be accomplished on a more efficient basis. The Commission limits the number of its meetings to the minimum required to efficiently and economically conduct Commission business. Documents to be discussed at a meeting are

substantial in volume and are sent to members in advance so as to allow members to prepare for the meeting and to reduce substantially the frequency and length of meetings.

The Commission uses technology to help manage costs. Routine communications to Commission members and staff are usually sent via electronic mail to reduce costs and resource expenditures. As mentioned above, the Commission has recently developed an efficient and secure method for digitally transmitting confidential case information to its members. This has resulted in less paperwork and postage costs consistent with the agency's sustainability goals.

The Commission's numerous documents are produced on computers with all staff being skilled in computer usage. While there is a cost of putting information and documents on the Commission's Internet website, they reach a vastly larger potential audience and electronic dissemination saves staff time and the cost of physically copying and mailing paper copies. A great deal of our core tasks are conducted with the use of technology, including legal research and online access of court and other records. We will need to continue to enhance our technological portfolio to remain current with advances in technology and to maintain our current high quality and quantity of work output despite our limited number of FTEs.

DISCUSSION OF MAJOR PARTNERS

The Commission is an independent agency within the judicial branch of state government. Because of its unique and specific role of independently reviewing the conduct of judicial officers under strict constitutionally-based confidentiality laws, the Commission, of necessity, must perform its mission-specific duties without major partners and without sharing its confidential investigative results with other state agencies.

The Commission regularly interacts, however, with other state agencies. For example, the Commission works with the Office of the Governor for appointment of six of the Commission's 11 regular members, and the six corresponding alternate members. The Commission relies on the Office of the Attorney General for legal representation on selected matters. The Commission works with the Department of Information Services, the Department of General Administration, and the Department of Personnel in its efforts to enable other agencies to participate in using information technology services, including software and hardware purchasing. The Commission makes substantial and appreciative use of the Department of Information Service's SCAN telecommunications network and gratefully relies on the Office of Financial Management's Budget Division and its Small Agency Client Services personnel for on-going accounting, budgeting, personnel and payroll services.

The Commission has long partnered with the Administrative Office of the Courts to provide judicial ethics and disciplinary-procedures training for Washington judicial officers and for court staff at all levels of the Washington judiciary. The Commission also regularly and frequently accesses that Office's Judicial Information Service (JIS) and SCOMIS databases.

The Commission is working with the Department of General Administration to locate appropriate new office space and to plan needed tenant improvements. A projected relocation date of November 2009 is necessitated by the planned demolition of the current location in early 2010.

The Commission has long participated in the activities of the Association of Judicial Disciplinary Counsel (the national association of state judicial disciplinary agencies), and of the American Judicature Society. Doing so permits efficient and economic acquiring and sharing of valuable professional information, and interaction and training in areas unique to the Commission and like agencies in other jurisdictions.

PROGRAM DESCRIPTION

A. State Judges

The Commission's function is to investigate and respond to complaints about alleged judicial violations of the Code of Judicial Conduct. The Commission's response includes, as appropriate, investigation, prosecution, and adjudication of such complaints. The Commission also reviews allegations of judicial disabilities, which if permanent or likely to become permanent, will seriously interfere with the performance of judicial duties.

The Commission has jurisdiction over violations of the Code of Judicial Conduct by all full-time and part-time judges, commissioners and magistrates at all levels of the Washington State judiciary. In the aggregate, these amount to about 554 judicial officer positions. In addition, the Commission has jurisdiction over all pro tempore judges, the number of which is variable and indeterminate.

Complainants have included litigants, friends or relatives of litigants, attorneys, public officials, judges and court personnel, and other citizens. Additionally, the Commission itself may initiate complaints.

Upon receipt of a complaint, a Commission investigator independently conducts a preliminary confidential investigation and reports directly to the Commission members. Depending on the complexity of the issues and facts involved, an investigation will often include extensive review of documents, court filings, audio recordings of court proceedings and other evidence; in person and/or telephone interviews of the complainant, litigants, counsel, court staff, and others who may have knowledge of facts pertinent to the alleged violation; and confidential written inquiries and investigation reports and legal analyses addressed to Commission members. The investigator may make recommendations for appropriate action. The Commission may direct additional inquiry by the investigator where needed. The Commission may retain disciplinary counsel to assist in the case. If it appears there is evidence to support allegations of unethical conduct, a further confidential investigation may take place and the judicial officer is provided a copy of a statement of allegations and an opportunity to respond to it. Sometimes such responses

from judges are sufficient to result in the allegations being dismissed and the confidential investigation closed. In other cases, however, the Commission finds probable cause to believe the Code of Judicial Conduct has been violated and prepares a statement of charges to serve upon the judge, which, once served upon the judge, becomes a public document. This initiates formal public disciplinary proceedings against the judge. The case is developed and thereafter presented to the Commission at a public hearing through disciplinary counsel and the judge's legal counsel, if any.

The Commission must dismiss a complaint that is not supported by clear, cogent and convincing evidence. If the Commission finds a violation of the Code of Judicial Conduct, it can admonish, reprimand, or censure a judge, or it can recommend to the Supreme Court that the judge be suspended or removed. Discipline imposed by the Commission can be appealed by the judge to the Supreme Court, which conducts a de novo review.

When a judge is alleged to be physically or mentally disabled, the Commission may retain medical specialists to advise it. The Commission may order a judge to be evaluated by a specialist selected by the Commission.

Any pending matter may be concluded by a stipulation entered into in a public proceeding. The stipulation must set forth all material facts relating to the proceeding and the conduct of the judge, and may impose any terms and conditions deemed appropriate.

B. State Ethics

On January 1, 1995, the State Ethics in Public Service Act (Ch. 42.52 RCW) became effective. The law applies to all state officials and employees of the executive, legislative, and judicial branches of state government. To enforce the ethics laws, the legislature created two new ethics boards in the executive and legislative branches and expanded the authority of the Commission on Judicial Conduct. The authority of the Commission covers state officials and state-level employees of the judicial branch of government. The Commission has adopted procedural and substantive rules (WAC 292-09 and 292-11) under the State Ethics Act.