

SIXTEENTH ANNUAL REPORT
OF
THE JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

CALENDAR YEAR 1988

117913

U.S. Department of Justice
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CONTENTS

| | <u>Page</u> |
|---|-------------|
| Creation and Organization | 1 |
| Purpose and Function | 3 |
| Rules and Procedure | 5 |
| Activities in 1988 | 9 |
| Meetings | 9 |
| Workload | 9 |
| Activities since 1973 | 12 |
| APPENDIX A- Past and Present Members of the Judicial Standards Commission | |
| APPENDIX B- Supreme Court Opinions Regarding Recommendations of the Judicial Standards Commission | |
| APPENDIX C- Summary of Commission Activities, 1973-1988 | |

CREATION AND ORGANIZATION

The Judicial Standards Commission was created in 1973 by virtue of an amendment to Article IV, Section 17 of the Constitution of North Carolina which was proposed by the General Assembly (Session Laws 1971, c. 560) and approved by the voters in the general election on 7 November 1972. The primary effect of the amendment was to add a new subsection (2) to Section 17 which mandated the General Assembly to prescribe a procedure for removal of judges, both trial and appellate, in addition to impeachment and address.

In light of the mandate embodied by this amendment, the General Assembly enacted Article 30 of Chapter 7A of the General Statutes (Session Laws 1971, c. 590) and thereby established, effective 1 January 1973 and conditioned upon the adoption of the amendment to Article IV, Section 17, the Judicial Standards Commission.

The statutory provisions relating to the Commission, G.S. 7A-375 et seq., describe its composition and the terms of members, set forth the grounds for censure or removal, establish certain procedural guidelines and standards for proceedings concerning a justice or judge, and authorize the employment of a staff.

The membership of the Judicial Standards Commission consists of a Court of Appeals judge, a superior court judge, and a district court judge, each appointed by the Chief Justice of the Supreme Court; two members of the Bar, elected by the Council of The North Carolina State Bar; and two citizens who

are neither judges, active or retired, nor attorneys, appointed by the Governor. The Court of Appeals judge serves as chairman of the Commission.

Commission members serve six-year terms, except that one judge, one attorney, and one citizen were initially appointed for three-year terms in order to achieve overlapping. Once a Commission member has served a full six-year term, he or she is ineligible for reappointment. Each Commission member is engaged in full-time employment in his or her primary business or profession. They serve without pay, except for travel and subsistence expenses and nominal per diem for members who are not judges, attend an average of six meetings annually to handle the various communications the Commission receives from around the State, and sit from time to time as required for hearings on charges against judges. A list of current and past members of the Commission is included as Appendix A to this report.

Prior to 1977 the Commission had no staff. The chairman and secretary performed the duties which ordinarily would devolve upon an executive secretary, and investigative and prosecutorial services were obtained from other agencies such as the State Bureau of Investigation, the Attorney General, and The North Carolina State Bar. On 1 January 1977, however, a grant from the Law Enforcement Assistance Administration (LEAA) was implemented which provided funds to establish a permanent staff consisting of an executive secretary, an investigator, and a secretary, and on 1 July 1979 the cost of this program was assumed by the State.

In the opinion of the Commission, particularly those members who served prior to the establishment of a staff, the addition of the staff has facilitated the Commission in the performance of its disciplinary responsibilities. It has also increased the "visibility" of the Commission to the public. Rather than having investigations performed by personnel from other agencies and having no office or telephone listing for the Commission, the Commission has centralized such activities in its own staff, thereby enhancing its identity and accessibility.

PURPOSE AND FUNCTION

The Judicial Standards Commission exists as the appropriate agency for the review of complaints "concerning the qualifications or conduct of any justice or judge of the General Court of Justice." G.S. 7A-377(a). It receives and investigates complaints of judicial misconduct or disability, initiates formal proceedings, conducts hearings, and recommends appropriate disciplinary action to the North Carolina Supreme Court or the North Carolina Court of Appeals. The Commission itself can neither censure nor remove. It functions to aid the Supreme Court in determining whether a judge or justice is unfit or unsuitable, and it is for that court to actually assess the disciplinary sanctions provided in G.S. 7A-376. In re Nowell, 293 N.C. 235, 237 S.E. 2d 246 (1977).

The grounds upon which a Commission recommendation can be made, following an adversary hearing affording the respondent certain due process rights, are set forth in N.C.

Const., art. IV, § 17(2), G.S. 7A-376, and Commission Rule 7.

The Commission can recommend the censure or removal of a judge or justice for:

- 1) willful misconduct in office;
- 2) willful and persistent failure to perform his duties;
- 3) habitual intemperance;
- 4) conviction of a crime involving moral turpitude; or
- 5) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In addition, the Commission can recommend the removal of any justice or judge for mental or physical incapacity which interferes with the performance of judicial duties and is, or is likely to become, permanent.

In order to provide judicial officers with notice of what conduct is expected of them, the Supreme Court, as authorized by the General Assembly in G.S. 7A-10.1, adopted the North Carolina Code of Judicial Conduct. The Code is consulted by the Commission as a guide to the meaning of G.S. 7A-376 providing the grounds for a recommendation of censure or removal. In addition, the decisions of the Supreme Court with respect to Commission recommendations may be consulted to provide guidance as to what actions constitute improper judicial conduct warranting censure or removal. A list of those decisions is provided as Appendix B to this report.

The purpose of the Judicial Standards Commission has been repeatedly stated by the Supreme Court, but was first voiced by Justice Exum in In re Crutchfield, 289 N.C. 597, 602, 223 S.E. 2d 822, 825 (1975):

"[A proceeding before the Judicial Standards Commission] is neither criminal nor civil in nature. It is an inquiry into the conduct of a judicial officer, the purpose of which is not primarily to punish any individual but to maintain due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges."

It is also hoped that the existence and activities of the Commission will create a greater awareness of proper judicial conduct on the part of the judges themselves.

RULES AND PROCEDURE

At its first meeting on 2 February 1973, the Judicial Standards Commission adopted a set of twenty (20) rules to govern its operation; and at its meetings on 12 December 1975 and 27 January 1978, the Commission adopted several clarifying amendments to these rules. Authority for the Commission's promulgation of its own rules of procedure is granted by G.S. 7A-377(a). In addition to providing a framework for the orderly disposition of complaints against members of the judiciary, the rules also incorporate safeguards to assure that proceedings before it comport with due process requirements.

Proceedings before the Judicial Standards Commission are triggered by the receipt of a written complaint. Once the complaint has been appropriately indexed and acknowledged, it is placed on the agenda of matters for Commission review. Upon

initial review, the Commission determines whether it has personal jurisdiction and subject matter jurisdiction; i.e., whether the allegations concern a judge or justice and whether the alleged facts indicate that the judge or justice may be guilty of one of the grounds set forth in G.S. 7A-376.

If a complaint is determined to contain factual allegations of judicial misconduct or disability, the Commission may then order a preliminary investigation. The Commission may also undertake an investigation on its own motion where it receives information from a source appearing to so warrant.

At this point the respondent judge is notified that a preliminary investigation has been ordered. The respondent is also advised as to the nature of the charge and is afforded an opportunity to present such matters as he or she may choose. Based on the information presented in the preliminary investigative report and any explanatory material submitted by the respondent, the Commission determines whether formal proceedings should be instituted. If it determines that no further action is warranted, the respondent is so notified and the case is closed.

On the other hand, if the Commission determines that formal proceedings should be instituted, the respondent is served with a notice of proceedings which identifies the complainant, specifies the charge or charges against him in ordinary and concise language, and advises him of his right to file a written, verified answer to the charges. The respondent is concurrently served with a copy of the verified complaint

which sets forth the alleged facts upon which the charges contained in the notice are based.

Following receipt of an answer, or upon expiration of the time allowed for filing, the Commission schedules a hearing on the charges. At the hearing, recorded by a court reporter, evidence in support of the charges is presented by the Commission's Special Counsel or by counsel supplied by the Attorney General. The respondent has the right to representation by counsel, to introduce evidence, and to examine and cross-examine witnesses. He or she also has the right to the issuance of subpoenas for attendance of witnesses or to produce books, papers, and other evidentiary matter.

At the conclusion of the hearing, the Commission determines whether to recommend censure or removal, a determination requiring the affirmative vote of five members. If a recommendation of censure or removal is approved, a transcript of the proceedings must be prepared and time allowed for settlement of any objections the respondent might have to it. Upon settlement of the record, a transcript of proceedings, findings of fact, conclusions of law, and recommendation are filed with the Clerk of the Supreme Court or Court of Appeals, as appropriate.

Upon review, the recommendation of the Judicial Standards Commission is not binding, and the evidence on both sides will be considered to determine whether the Commission's findings of fact are supported by clear and convincing evidence. It is for the Supreme Court and the Court of Appeals to act as

"the adjudicatory body to provide the final scrutiny and make final judgment whether to censure, remove, remand or dismiss the proceeding." In re Hardy, 294 N.C. 90, 97, 240 S.E. 2d 367, 372 (1978).

It should be noted that, except for the Commission's recommendation and the record filed in support thereof, all papers filed with and proceedings before the Judicial Standards Commission are confidential as provided by G.S. 7A-377 and Commission Rule 4. Such confidentiality is intended to encourage complainants to express their concerns without fear of reprisal or intimidation and to protect a judge's reputation and the integrity of the judicial process from unfounded or frivolous complaints.

It should also be noted that the Commission occasionally utilizes a disciplinary measure known as a reprimand in addition to a recommendation of censure or removal. The reprimand is a mechanism administratively developed for dealing with inquiries wherein the conduct involved may be improper but not of such a nature as would warrant censure or removal. Such a determination can be made at any stage of Commission proceedings after completion of a preliminary investigation. Issuance of a reprimand effectively terminates proceedings but also is recorded in the respondent's case file thereby putting the respondent on notice of the Commission's view of such conduct and the consequences which may ensue any repetition. Since the establishment of the Judicial Standards Commission in 1973, sixteen (16) reprimands have been issued.

ACTIVITIES IN 1988

Meetings--During this calendar year, the Judicial Standards Commission met on the following dates to consider various matters:

22 January 1988

25 March 1988

10 June 1988

28 October 1988

Workload--A complaint or other information against a member of the judiciary, whether filed with the Commission or initiated by the Commission acting on its own motion, is designated as an "Inquiry Concerning a Judge." Thirteen (13) such inquiries were pending as of 1 January 1988: 4 complaints received near the end of 1987 awaiting review and 9 preliminary investigations. During 1988, 87 new inquiries were filed or initiated by the Commission on its own motion. As TABLE 1 which follows indicates, 20 matters were left pending as of 31 December 1988: 16 complaints, 2 preliminary investigations, and 2 formal proceedings.

TABLE 1

| | |
|----------------------------|-----|
| Matters Pending 1/1/88 | 13 |
| 1988 Inquiries | 87 |
| Total Workload | 100 |
| Inquiries Disposed in 1988 | 80 |
| Matters Pending 12/31/88 | 20 |

Dispositional information is more fully presented in TABLE 2 which indicates that as in previous years, the majority of inquiries were terminated after initial review by the Commission. Of the 91 inquiries initially reviewed in 1988, the Commission ordered 9 investigations covering 11 complaints. Of the 17 total preliminary investigations ordered or considered by the Commission in 1988, 10 were determined to warrant no further action based on the results of the investigation, 2 were pending a formal hearing at the end of 1988, 1 resulted in a reprimand, 2 resulted in recommendations of censure, and 2 were pending completion of the investigation at the end of 1988.

TABLE 2
JUDICIAL STANDARDS COMMISSION
1988

| Complaints 91 ¹ | Investigations 17 ² | Formal Proceedings 5 ³ |
|---|--|--|
| No Jurisdiction Within Jurisdiction but No Investigation Warranted - Investigation Ordered 9* Pending at end of year 16 | No Further Action 10 Office Vacated - Reprimand 1 Formal Proceedings Instituted 4 Pending at end of year 2 | No Further Action 1 Office Vacated - Reprimand - Hearing Held 2 Pending at end of year 2 |
| Hearings 2 | Recommendations 2 | |
| No Further Action - Office Vacated - Reprimand - Recommendation filed 2 Pending at end of year - | Censure 2 Removal - | |

¹ includes 4 complaints pending at end of 1987

² includes 8 investigations pending at end of 1987

³ includes 1 formal proceeding pending at end of 1987

* 11 complaints covered

TABLE 3 has been included to provide complaint profile data as to the subjects and sources of complaints filed with the Commission in 1988.

TABLE 3

1988 COMPLAINT PROFILE DATA

Subject of Complaint

| | |
|----------|------------------------|
| 71 | District Court Judge |
| 16 | Superior Court Judge |
| 0 | Court of Appeals Judge |
| 0 | Supreme Court Justice |
| <u>2</u> | Other |
| 89* | |

Source of Complaint

| | |
|----------|-------------------------------|
| 1 | Anonymous |
| 2 | Attorneys |
| 38 | Civil litigant |
| 7 | Concerned Citizen |
| 1 | Court personnel/officials |
| 15 | Criminal defendant |
| 0 | Judges |
| 5 | Judicial Standards Commission |
| 0 | News media |
| 17 | Non-litigating citizen** |
| 1 | Public official |
| <u>0</u> | State Bar grievance board |
| 87 | |

* some complaints involved more than one judge

** includes witnesses as well as friends and family of litigants or defendants

ACTIVITIES SINCE 1973

Cumulative data on activities of the Judicial Standards Commission since its establishment in 1973 is presented as Appendix C to this report. The statistics presented in this appendix indicate that the Judicial Standards Commission has received 1014 "Inquiries Concerning a Judge" in its sixteen-year history, 16 of which awaited review at the end of 1988.

Eight hundred forty-nine (849) inquiries were concluded after initial review by the Commission, but the Commission has ordered 122 preliminary investigations covering 149 inquiries. Two (2) investigations and 2 formal proceedings were still pending at the end of 1988.

Eighty-seven (87) inquiries were concluded at the investigative stage; 10 inquiries were concluded after formal proceedings were instituted; 6 inquiries resulted in a recommendation of censure or removal filed with the Supreme Court of North Carolina.

Of the 9 recommendations of censure filed with the Supreme Court, 7 have been approved and 2 were pending before the Court at the end of 1988. Of the 5 recommendations of removal filed with the Supreme Court, all but one have been approved. In In re Martin, 295 N.C. 291, 245 S.E. 2d 766 (1978), the Court declined to remove the respondent but did censure the respondent for his conduct.

In addition to the 14 recommendations of censure or removal filed by the Commission, reprimands have been issued in 16 inquiries and 10 inquiries have been terminated because the respondent vacated office.

BY AUTHORITY OF THE JUDICIAL STANDARDS COMMISSION, February 17, 1989.



Gerald Arnold, Chairman

APPENDIX A

Past and Present Members
of the
Judicial Standards Commission

Judges appointed by the Chief Justice

Court of Appeals

| | | | |
|------------------------|-------------|--------------------|------|
| *Judge Walter E. Brock | 1 January | 1973 - 17 November | 1977 |
| Judge Edward B. Clark | 18 November | 1977 - 31 December | 1978 |
| | 1 January | 1979 - 30 April | 1982 |
| Judge Gerald Arnold | 13 August | 1982 - 31 December | 1984 |
| | 1 January | 1985 - 31 December | 1990 |

Superior Court

| | | | |
|---------------------------|-----------|--------------------|------|
| *Judge George M. Fountain | 1 January | 1973 - 31 December | 1978 |
| Judge W. Douglas Albright | 1 January | 1979 - 31 December | 1984 |
| Judge James M. Long | 1 January | 1985 - 31 December | 1990 |

District Court

| | | | |
|------------------------------|------------|--------------------|------|
| *Judge E. D. Kuykendall, Jr. | 1 January | 1973 - 31 December | 1975 |
| Judge C. Walter Allen | 1 January | 1976 - 26 October | 1978 |
| Judge L. T. Hammond, Jr. | 27 October | 1978 - 31 December | 1981 |
| | 1 January | 1982 - 30 November | 1986 |
| Judge W. S. Harris, Jr. | 1 December | 1986 - 31 December | 1987 |
| | 1 January | 1988 - 31 December | 1993 |

Citizens appointed by the Governor

| | | | |
|------------------------------|-----------|--------------------|------|
| *Mr. Marvin B. Koonce, Jr. | 1 January | 1973 - 31 December | 1975 |
| | 1 January | 1976 - 31 December | 1981 |
| Mrs. Veatrice C. Davis | 29 March | 1982 - 31 December | 1987 |
| Mr. Albert E. Partridge, Jr. | 1 January | 1988 - 31 December | 1993 |
| *Mrs. George L. Hundley | 1 January | 1973 - 31 December | 1978 |
| Ms. N. Susan Whittington | 12 March | 1979 - 31 December | 1984 |
| Ms. Pamela S. Gaither | 1 January | 1985 - 31 December | 1990 |

Attorneys elected by the N.C. State Bar Council

| | | | |
|----------------------------|-----------|--------------------|------|
| *Mr. Emerson T. Sanders | 1 January | 1973 - 31 December | 1978 |
| Mr. Jerome B. Clark, Jr. | 1 January | 1979 - 31 December | 1984 |
| Mr. Rivers D. Johnson, Jr. | 1 January | 1985 - 31 December | 1990 |
| *Mr. Harold K. Bennett | 1 January | 1973 - 28 July | 1975 |
| Mr. Robert G. Sanders | 30 July | 1975 - 31 December | 1975 |
| | 1 January | 1976 - 31 December | 1981 |
| Mr. E. K. Powe | 1 January | 1982 - 31 December | 1987 |
| Mr. Louis J. Fisher, Jr. | 1 January | 1988 - 31 December | 1993 |

*original member

Supreme Court Opinions
Regarding Recommendations
of the
Judicial Standards Commission

In re Crutchfield, 289 N.C. 597, 223 S.E. 2d 822 (1975).

In re Edens, 290 N.C. 299, 226 S.E. 2d 5 (1976).

In re Stuhl, 292 N.C. 379, 233 S.E. 2d 562 (1977).

In re Nowell, 293 N.C. 235, 237 S.E. 2d 246 (1977).

In re Hardy, 294 N.C. 90, 240 S.E. 2d 367 (1978).

In re Martin, 295 N.C. 291, 245 S.E. 2d 766 (1978).

In re Peoples, 296 N.C. 109, 250 S.E. 2d 890 (1978).

In re Martin, 302 N.C. 299, 275 S.E. 2d 412 (1981).

In re Hunt, 308 N.C. 328, 302 S.E. 2d 235 (1983).

In re Kivett, 309 N.C. 635, 309 S.E. 2d 442 (1983).

In re Wright, 313 N.C. 495, 329 S.E. 2d 668 (1985).

In re Griffin, 320 N.C. 163, 357 S.E. 2d 682 (1987).

APPENDIX C

Summary of
Commission Activities
1973 - 1988

| Complaints 1014 | Investigations 122 | Formal Proceedings 32 |
|---|--|---|
| No Jurisdiction 763 Within Jurisdiction but No Investigation Warranted 86 Investigation Ordered 122 ¹ Pending at end of year 16 | No Further Action 73 Office Vacated 8 Reprimand 6 Formal Proceedings Instituted 32 ² Pending at end of year 2 | No Further Action 1 Office Vacated 1 Reprimand 8 Hearing Held 20 Pending at end of year 2 |
| Hearings 20 | Recommendations 14 | |
| No Further Action 3 Office Vacated 1 Reprimand 2 Recommendation filed 14 Pending at end of year - | Censure 9 Removal 5 | |

¹ 149 complaints are covered by these investigations

² 33 investigations are covered by these formal proceedings