



# Nebraska Commission on Judicial Qualifications

## Creation and Authority of the Commission on Judicial Qualifications

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The Nebraska Commission on Judicial Qualifications reviews complaints submitted by any citizen concerning the ethical conduct of judges in Nebraska.

The Nebraska Constitution, Nebraska Statutes and the Nebraska Code of Judicial Conduct describe the basis for discipline:

- (1) Willful misconduct in office;
- (2) Violation of the Code of Judicial Conduct;
- (3) Willful disregard of or failure to perform judicial duties;
- (4) Habitual intemperance;
- (5) Conviction of a crime involving moral turpitude;
- (6) Disbarment;
- (7) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The Commission is not authorized to review decisions made by a judge or to grant any form of relief arising out of a lawsuit, except to the extent that the action of the judge in the case constitutes a violation of one of the grounds for discipline.

Upon receiving a complaint, the Commission is authorized to conduct an investigation and may issue a public reprimand following a closed hearing, or may order an

open hearing at its discretion. Otherwise, only the Nebraska Supreme Court is authorized to issue more serious discipline. It does so following a de novo review of the Commission's hearing, findings and recommendation for discipline. Upon review, the Supreme Court may reprimand, censure, suspend for up to six months without pay, or remove a judge from office.

All papers filed with and proceedings before the Commission, prior to any open hearing, are confidential and all testimony given before the Commission is deemed a privileged communication.

In 1966, Nebraska voters adopted constitutional provisions providing for a Commission on Judicial Qualifications. In 1967, the Nebraska Legislature passed the enabling legislation providing for a Commission composed of 11 members, seven of whom were judges appointed by the Chief Justice of the Supreme Court, two attorneys appointed by the Nebraska State Bar Association, and two lay members appointed by the Governor. The Commission was limited to making recommendations to the Supreme Court for the removal or retirement of judges after conducting an investigation and hearing.

# Complaint Process Generally Followed by Commission

*The complaint process is outlined in the Nebraska Statutes and in the Commission's rules.*

The Commission on Judicial Qualifications meets at least six times each year. The Commission reviews complaints against judges submitted to it by citizens and may on its own motion initiate an inquiry or investigation into a judge's conduct. The Commission reviews and screens each complaint to determine whether any further inquiry is required or whether it should be dismissed.

If the Commission finds there is insufficient cause to proceed further, the matter is dismissed and the complainant is notified of the dismissal. If the judge was notified of the existence of the complaint or if it was made public (by actions of the complainant or others), the judge also is notified of the dismissal.

## Informal Inquiry

If the Commission determines that further information is needed it may undertake an informal inquiry or investigation. Typically, this consists of the Commission's investigator interviewing possible witnesses, reviewing transcripts and other court documents as the

case requires, and submitting a report to the Commission. The Commission then either dismisses the complaint as unfounded or determines that a preliminary investigation be conducted. There is no procedure for appeal of the Commission's decision to dismiss or to investigate further.

During the initial inquiry, the judge is not notified of the complaint. All information is and remains confidential.

## Preliminary Investigation

Although the preliminary investigation may be conducted by the Commission as a whole or a committee of commission members, in most cases, the investigation is conducted by the Commission's investigator. Once the Commission determines that a preliminary investigation is warranted, the judge is notified of the complaint and is provided the following information:

1. The nature of the complaint and the substance of the relevant allegations;
2. The identity of the complainant, or that the investigation is on the Commission's own motion;

3. A copy of the Commission rules;
4. A reasonable opportunity to respond and to present relevant information to the Commission.

The investigator reports to the Commission the relevant information gathered during the course of the investigation. Upon completion of its investigation, the Commission determines whether there is sufficient cause to file a formal complaint. If not, the matter is dismissed and the judge and the complainant are notified of the disposition. There is no procedure for appeal of the Commission's dismissal.

If the Commission determines there is probable cause to warrant discipline, the Commission may:

1. File a confidential complaint and conduct a closed hearing. Upon conclusion of that hearing, the Commission may dismiss the complaint or may issue a public reprimand of the judge.
2. File a formal complaint with the Clerk of the Supreme Court and order a formal open hearing.

There is no procedure for appeal of the Commission's reprimand or order for public hearing.

## Additional Responsibilities of the Commission on Judicial Qualifications

**Judicial Retirement for Disability:** Judges who become disabled may file an application with the Commission for disability retirement. If, after review, the Commission determines that a judge is permanently disabled, the Commission will notify the Public Employees Retirement Board that the judge's application is granted.

**Workplace Harassment:** The Commission on Judicial Qualifications has an expedited procedure for a claim of workplace harassment under the Supreme Court's policy. Allegations are to be advanced for consideration and disposition as quickly as possible.

# Complaint Process Generally Followed by Commission

## Formal Open Hearing

If the Commission decides upon a formal open hearing, a complaint is then filed with the Clerk of the Nebraska Supreme Court as a public record. The complaint is served upon the judge who has 15 days within which to file an answer. The answer must “contain a full and fair disclosure of all facts and circumstances” pertinent to the complaint. (Rule 6). Failure to do so may be additional grounds for disciplinary action.

Generally, the Commission requests the Supreme Court appoint a Special Master to conduct the formal open hearing, which follows rules of procedure and evidence, and the Commission’s rules. The proceedings are recorded. Evidence is presented by the Commission’s counsel and the judge. The allegations of misconduct must be proved by clear and convincing evidence.

Within 30 days of the open hearing, the Special Master provides a transcript of proceedings and a report to the Commission containing findings of fact and conclusions of law. The parties have an opportunity to object to the Master’s report and the Commission may schedule arguments and receive additional evidence. The Commission then reviews the matter de novo, adopts the Master’s finding and conclusions or amends them, and makes a recommendation for discipline to the Supreme Court.

Such a recommendation may include public reprimand, suspension for up to six months, removal from office, or other discipline not specifically defined. The Commission’s recommendation is made upon the affirmative vote of six or more of its members.

## Action by Supreme Court

Either party may ask the Supreme Court to reject or modify the

decision of the Commission. The Supreme Court, absent the Chief Justice, reviews the record de novo. The parties may be given an opportunity to further brief and argue the matter, and additional evidence may be received at the Court’s discretion. The Nebraska Supreme Court’s decision is public, and is final.

## Confidentiality of Records

All papers filed with and proceedings before the Commission or masters appointed by the Supreme Court prior to a reprimand or formal hearing are confidential. However, under certain limited circumstances, the confidentiality of papers and proceedings may be waived in writing by the judge.

Note: The law provides an exception permitting the judge to waive confidentiality if the matter is dismissed prior to the filing of any Commission complaint, and has become publicly known.

## Nebraska Commission on Judicial Qualifications Membership

**Chief Justice Michael G. Heavican**, Supreme Court, Chairperson and Permanent Member

**Hon. Alan L. Brodbeck**, O’Neill, County Court

**Hon. Terri S. Harder**, Minden, District Court

**Hon. Wadie Thomas**, Omaha, Separate Juvenile Court

**Fred Kauffman**, Lincoln, Attorney

**D. Steven Leininger**, Grand Island, Attorney

**Mandy Strigenz**, Omaha, Attorney

**Charles Diers**, Fremont, Lay Member

**Mary C. Gerdes**, Lincoln, Lay Member

**Margaret Hornady**, Grand Island, Lay Member

**Janice K. Walker**, State Court Administrator, Secretary to the Commission

# Commission on Judicial Qualifications Annual Report 2011

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In 1980, the Constitution was amended. In 1981, LB 475 was enacted by the Legislature which changed the composition of the Commission and enhanced its authority. The Commission now has 10 members consisting of the Chief Justice who serves as its permanent chairperson; three judges appointed by the Chief Justice; three attorneys, appointed by the Nebraska State Bar Association; and three lay members appointed by the Governor.

In 1984, the Constitution was further amended to restrict the authority of the Commission on Judicial Qualifications by eliminating its authority to issue reprimands without due process hearings and public notice of the reprimand.

Nebraska Statutes were amended in 2005 clarifying that the Commission may not issue private reprimands and requiring the Commission to prepare an annual report.

The Commission now has the authority to reprimand or order

open hearings and, upon finding by clear and convincing evidence that the charges are established, recommend to the Supreme Court that a judge be reprimanded, disciplined, censured, suspended without pay for a period not exceeding six months, removed or retired.

Under the amended law, in addition to the prior grounds for discipline, a judge may be disciplined for “conduct prejudicial to the administration of justice that brings the judicial office into disrepute”.

## Number of Complaints—2011

The Commission receives and investigates approximately 100 complaints each year. Of that total, approximately 98% are dismissed, either because the basis of the complaint is an appealable issue beyond the Commission's jurisdiction, or because the investigation fails to produce sufficient facts to warrant additional proceedings. Statistics for 2011 show:

<b>Total number of meetings held:</b>	<b>6</b>	<b>2011 Costs Incurred by Commission:</b>	<b>\$14,277.15</b>
Number of new complaints filed in 2011:	72	Expenses paid to members (\$ 24-718):	\$ 647.42
*Total number of complaints dismissed:	91	Expenses paid to Special Masters:	0
Public reprimands issued by Commission:	0	Expenses paid to Special Investigators:	\$11,147.49
Judges removed from office:	0	Miscellaneous expenses:	\$2,482.24
Other Discipline:	0	(e.g., court reporter fees, photocopies, subscriptions, postage)	
Disability retirements granted:	1		

\* The number of complaints dismissed in 2011 includes matters pending and held over from 2010.

### Report 2011

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Judicial Branch Web Site:  
[www.supremecourt.ne.gov](http://www.supremecourt.ne.gov)  
Under the 'Professional Ethics' tab  
for additional information on the complaint process



NEBRASKA SUPREME COURT

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