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NEBRASKA JUDICIAL SYSTEM

Report 2015

nebraska commission on Judicial Qualifications

AUTHORITY

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 grant any form of relief arising out of a lawsuit. Moreover, the Commission is not authorized to review the judge's decisions in any case, except to the extent that the judge's conduct constitutes a violation of one of the grounds for discipline.

Upon receiving a complaint, the Commission is authorized to conduct an inquiry or an investigation as it deems appropriate, to issue a public reprimand following a closed hearing, or to order an open hearing and recommend discipline to the Nebraska Supreme Court. Only the Nebraska Supreme Court is authorized to

issue more serious discipline, following a de novo review of the Commission's hearing, findings and recommendation. 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 privileged.

HISTORY

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.

Later changes in the law resulted in the current 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 to issue reprimands without due process and public notice; and in 2005, Nebraska Statutes were amended clarifying that the Commission may not issue any private reprimands and requiring that the Commission prepare an annual report.

generally followed by commission COMPLAINT PROCESS

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

The Commission on Judicial Qualifications usually meets 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 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, which typically consists of the Commission's investigator interviewing possible witnesses or reviewing court documents as the

case requires, and reporting to the Commission. Thereafter, the Commission then either dismisses the complaint or proceeds with a preliminary investigation. 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 or any of its members, in most cases, the investigation is conducted by an 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;

The judge is also provided a reasonable opportunity to respond and to present relevant information to the Commission.

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 formal 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. There is no appeal from the Commission's reprimand.
2. File a formal complaint and order a formal open (public) hearing. There is no procedure for appeal of the Commission's decision to order a public hearing.

Complaint Process Generally Followed by Commission

FORMAL OPEN HEARING

If the Commission decides upon a formal open hearing, a complaint is filed with the Clerk of the Nebraska Supreme Court and served upon the judge who has 15 days to answer. The answer must "contain a full and fair disclosure of all facts and circumstances" pertinent to the complaint.

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. Allegations of misconduct must be proved by clear and convincing evidence.

Within 30 days of the open hearing, the Special Master reports to the Commission findings of fact and conclusions of law. The

parties have an opportunity to object to the Master's report and the Commission may receive additional evidence. The Commission reviews the matter de novo, adopts the Master's findings 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.

ACTION BY SUPREME COURT

The Supreme Court, absent the Chief Justice, reviews the record de novo, and may accept, reject or modify the Commission's recommendations. 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. Under certain limited circumstances, confidentiality may be waived or certain documents be made public.

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.

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

Bradley Holbrook, Kearney, Attorney
Mandy Strigenz, Omaha, Attorney
Terry Wittler, Lincoln, Attorney

Tammy Allen, Grand Island, Lay Member
Douglas Dolezal, Lincoln, Lay Member
Judy Glassburner, Geneva, Lay Member

Corey R. Steel, State Court Administrator, Secretary to the Commission

NUMBER OF COMPLAINTS—2015

The Commission receives and investigates approximately 75 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 2015 show:

Total number of meetings held:	6	2015 Costs Incurred by Commission:	\$ 13,675.63
Number of new complaints filed in 2015:	64	Expenses paid to members (§ 24-718):	\$ 464.60
Number of informal inquiries:	16	Expenses paid to Special Masters:	\$ 0.00
Number of preliminary investigations:	0	Expenses paid to Special Investigators:	\$ 11,018.10
*Number of complaints dismissed:	72	Miscellaneous expenses: (e.g., court reporter fees, photocopies, subscriptions, postage)	\$ 2,192.93
Number of complaints dismissed as being subject to the appellate process:	8		
Public reprimands issued by Commission:	0		
Judges removed from office:	0		
Other discipline:	0		
Disability retirements granted:	0		

* The number of complaints dismissed in 2015 includes matters pending and held over from 2014.



NEBRASKA
SUPREME
COURT

Judicial Branch Web Site:
www.supremecourt.nebraska.gov
Under: Administration >
Professional Ethics >
Judicial Discipline

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