

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

2013 Annual Report

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The Indiana Judicial Nominating Commission (“Nominating Commission”) and the Indiana Commission on Judicial Qualifications (“Qualifications Commission”) are established by Article 7, section 9, of the Indiana Constitution. The Chief Justice of Indiana or his designee is the ex officio Chairman of both Commissions. The other six members, who serve three-year terms, are three lawyers elected by other lawyers in their districts and three non-lawyers appointed by the Governor.

In addition to the Chief Justice (or his designee), the elected and appointed Commission members as of December 31, 2013 were Molly Kitchell of Zionsville; William E. Winingham, Jr., Esq., of Indianapolis; Steven L. Williams, Esq., of Terre Haute; Jean Northenor of Warsaw; John D. Ulmer, Esq., of Goshen; and Tom Rose of Indianapolis. Both the Nominating Commission and the Qualifications Commission met on six occasions during 2013.

Although comprised of the same members, the two Commissions perform distinct functions. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. The Nominating Commission also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. It selects three nominees for each vacancy, and the Governor appoints one of the nominees to fill the vacancy.

The Qualifications Commission investigates allegations of ethical misconduct brought against Indiana judges, judicial officers, and candidates for judicial office. Periodically, the Commission privately cautions judges who have committed relatively minor or inadvertent violations of the Code of Judicial Conduct. In the most serious cases, the Qualifications Commission prosecutes formal disciplinary charges in public proceedings before the Supreme Court. Additionally, the Qualifications Commission and its staff provide judges and judicial candidates with advice about their ethical obligations, and Commission counsel responded to several hundred informal requests for advice during the year.

The Qualifications Commission considered 375 complaints alleging judicial misconduct this year. It dismissed 341 complaints summarily (or after Commission staff examined court documents or conducted informal interviews and determined that these complaints did not raise valid issues of judicial misconduct).

Of the remaining 34 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations and conducted inquiries or investigations. Of those, one complaint was dismissed after the Qualifications Commission concluded the judge had not violated the Code of Judicial Conduct, and two complaints were dismissed without prejudice. The Qualifications Commission sent advisory letters or privately cautioned twenty other judges for deviations from their ethical obligations. The Qualifications Commission's decision to caution a judge rather than proceed to formal, public charges depends upon the seriousness of the violation, the judge's acknowledgement of the violation, whether the conduct was intentional or inadvertent, whether the judge has a history of meritorious complaints, and other mitigating or aggravating circumstances.

During the year, the Supreme Court resolved two disciplinary cases filed by the Commission. On February 25, 2013, the Commission filed formal disciplinary charges against Senior Judge Lisa M. Traylor-Wolff in connection with her representation of a criminal defendant. (Although full-time judges are prohibited from practicing law, this prohibition does not apply to part-time judges, including senior judges). The Commission alleged that Senior Judge Traylor-Wolff engaged in an improper romantic relationship with her client, which included engaging in intimate contact while in an attorney-client visiting room at the prison where the client was incarcerated. On April 9, 2013, the Supreme Court issued an order accepting a settlement agreement which permanently banned Traylor-Wolff from judicial service and suspended her from practicing law for one year, with all but 45 days of the suspension conditionally stayed subject to Traylor-Wolff's successful completion of two years of probation which would include treatment and monitoring with the Judges and Lawyers Assistance Program ("JLAP"). (Matter of Traylor-Wolff, case no. 09S00-1302-JD-148, April 9, 2013).

On May 7, 2013, the Court issued an order accepting the Conditional Agreement for Discipline jointly tendered by the Commission and judicial candidate Tammy R. Davis. Formal disciplinary charges were filed against Davis in October 2012, alleging that she made false, misleading, and/or inappropriate statements during her campaign for Franklin Superior Court judge about the character and conduct of the incumbent judge. As part of the settlement agreement, Davis was publicly reprimanded and barred from seeking judicial office for five years. (Matter of Davis, case no. 24S00-1210-JD-610, May 7, 2013).

On August 26, 2013, in Matter of Brown, case no. 49S00-1308-JD-560, the Commission filed formal disciplinary charges against Marion Superior Court Judge Kimberly J. Brown, alleging dereliction of judicial duties, including significant delays in ruling on cases; inappropriate and hostile demeanor toward staff, attorneys, and litigants; failure to adequately supervise court staff, which resulted in delayed releases of at least nine defendants from jail; and failure to cooperate with fellow judges to help address these issues. After the appointment of a three-member panel of Masters, a disciplinary hearing was held from November 4, 2013 through November 10, 2013. During the course of this hearing, the Commission counsel and defense counsel called a total of 79 witnesses and entered more than 230 exhibits into evidence. On December 27, 2013, the Masters filed their Findings of Fact, Conclusions of Law and Recommended Sanction with the Supreme Court. The Masters made findings that Judge Brown had committed judicial misconduct in forty-six of the forty-seven charged counts and recommended her permanent removal from judicial office. At the end of the calendar year, the case remained pending before the Supreme Court for final disposition.

The Commission also issued an advisory opinion in 2013 which addressed judicial pay arrangements. This advisory opinion posited that judges shall refrain from taking any salary payments which are contingent on the number of cases filed with the court. Judicial advisory opinions are periodically issued in response to questions or concerns brought to the Commission's attention. Although these advisory opinions are not binding, a judge's compliance with an advisory opinion is seen by the Commission as a good faith effort to comply with the Code of Judicial Conduct.

Eight inquiries or investigations were pending at the end of the year.

The Nominating Commission and Qualifications Commission are staffed by the Division of State Court Administration with a full-time attorney, a part-time staff attorney, and an administrative assistant. A more detailed report about the Commission and its members and activities may be found at www.IN.gov/judiciary/jud-qual/.