

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

2014 Annual Report

Adrienne Meiring, Counsel

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 her 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 designee), the elected and appointed Commission members as of December 31, 2014 were David M. Tinkey of Brownsburg; Lee C. Christie, 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 2014.

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 submits this panel to the Governor, who appoints one of the nominees to fill the vacancy.

On August 6, 2014, the Nominating Commission convened in Indianapolis to select the Chief Justice of Indiana. Former Chief Justice Brent E. Dickson announced in June 2014 that he was stepping down to serve as an Associate Justice, and the other four Justices – Hon. Robert D. Rucker, Hon. Steven H. David, Hon. Mark S. Massa, and Hon. Loretta H. Rush – each submitted their candidacy for this position. After interviewing each Associate Justice, the Commission deliberated privately and then, in a unanimous public vote, selected Hon. Loretta H. Rush as the next Chief Justice.

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 402 complaints alleging judicial misconduct this year. It dismissed 362 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 40 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations and conducted inquiries or investigations. Of those, two complaints were dismissed after the Qualifications Commission concluded the judges had not violated the Code of Judicial Conduct, and one complaint was dismissed without prejudice. The Qualifications Commission sent advisory letters or privately cautioned twenty-six 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.

In 2014, the Commission chose to close its investigation into a judge's misconduct after the judge agreed to resign from office and to never perform any judicial duties in the future. The Commission's investigation had focused on the judge's participation in an ex parte conversation which caused the judge to change a defendant's bond to no-bond (when the defendant was not charged with a non-bailable crime or subject to another legal hold) and for mishandling cases by imposing remedies that exceeded the judge's statutory and legal authority when defendants failed to pay debts or complete community service.

In October 2014, the Commission publicly released a Stipulation and Agreement for Resolution of Investigation which concluded the Commission's investigation of former Center Township Small Claims Judge Michelle Smith Scott. The Commission had been investigating allegations that Judge Scott had been using her judicial position to promote her private wedding business. As part of the agreement, Judge Scott agreed to neither seek nor accept future judicial office (she resigned from her position effective October 3, 2014), and the Commission agreed to conclude its investigation without further proceedings. (Investigation of Smith Scott, QC06-14-021, November 7, 2014 – Agreement can be found at www.in.gov/judiciary/3705.htm).

During the year, the Supreme Court resolved two judicial disciplinary cases filed by the Commission. On March 4, 2014, in *Matter of Brown*, 4 N.E.3d 619 (Ind. 2014), the Court issued a

per curiam opinion removing Marion Superior Court Judge Kimberly J. Brown from judicial office, which also renders her ineligible for any future judicial service. The Commission had filed formal disciplinary charges against Judge Brown on August 26, 2013, alleging dereliction of duties and delays on cases; inappropriate and hostile demeanor toward staff, litigants, and other judges; failure to supervise and train her employees, which led to the delayed releases from incarceration of at least nine criminal defendants; and failure to cooperate with fellow judges who attempted to assist with these issues. A hearing was held before three appointed Masters from November 4 – 10, 2013. These Masters determined, and the Supreme Court agreed, that Judge Brown committed judicial misconduct in forty-six of the forty-seven charged counts.

On December 5, 2014, the Court accepted the jointly-tendered Conditional Agreement for Discipline in Matter of Weber, 21 N.E.3d 92 (Ind. 2014). The Commission had filed formal charges against Clarksville Town Court Judge Mickey K. Weber on September 30, 2014, for operating a vehicle while intoxicated. Pursuant to the settlement agreement, Judge Weber resigned as judge, as of December 31, 2014, and agreed not to seek or accept future judicial service until he could successfully complete an approved alcohol treatment plan and two-year monitoring agreement.

On December 11, 2014, the Commission filed formal disciplinary charges against Muncie City Court Judge Dianna L. Bennington, alleging that Judge Bennington had abused her judicial power by holding at least two individuals in contempt without providing a hearing or opportunity to respond, imposed sentences outside the bounds of her legal and statutory authority, and engaged in injudicious public conduct related to her personal life (including her public use of a racial slur). On December 18, 2014, the Supreme Court suspended Judge Bennington with pay, pending the disposition of the disciplinary proceedings.

The Commission also issued two advisory opinions in 2014, both dealing with campaign-related issues. Advisory Opinion 1-14 addressed the restriction on usage of court facilities (or photos of the court) in judicial campaign advertisements, while Advisory Opinion 2-14 discussed the ability of a judge or judicial officer to participate or assist with a family member's campaign for public office. 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.

Seven 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/.