

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Fiscal Year 2007-2008

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The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications are established by Article VII, Section 9, of the Indiana Constitution. The Chief Justice of Indiana, Randall T. Shepard, 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, the elected and appointed Commission members are Stephen L. Williams, Esq., Terre Haute; Joan M. Hurley, Sellersburg; John C. Trimble, Esq., Indianapolis; Mark Lubbers, Indianapolis; Sherrill Wm. Colvin, Esq., Fort Wayne; and Dr. Daryl R. Yost, Fort Wayne. James H. Young, Esq., Indianapolis, also served during the fiscal year. The Nominating Commission met on seven occasions, and the Qualifications Commission met six times during the fiscal year.

Although comprised of the same members, the two Commissions perform distinct functions within the judiciary. 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. On December 12, 2007, after conducting interviews of fifteen candidates for appointment to the Court of Appeals, the Commission nominated the Honorable Elaine Brown, Dubois Superior Court, Evansville attorney Leslie Shively, and the Honorable G. Michael Witte, Dearborn Superior Court, to replace retiring Judge John T. Sharpnack. On February 15, 2008, Governor Daniels appointed the Honorable Elaine Brown to the Court of Appeals, Fifth District.

The Nominating Commission also certifies former judges as Senior Judges to help qualifying courts with their caseloads. During fiscal year 2007-2008, the Nominating Commission certified 5 new Senior Judges and recertified 89 Senior Judges. No Senior Judge applications were rejected during this fiscal year.

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. These charges ultimately are resolved by 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 requests for advice during the fiscal year. Also during the fiscal year, the Commission issued three published opinions, Advisory Opinion #1-07 (Delays), Advisory Opinion #2-07 (Trial Rules 53.1 and 53.2), and Advisory Opinion #3-07 (Disqualification and Litigants' Complaints).

The Qualifications Commission considered 287 complaints alleging judicial misconduct during fiscal year 2007-2008. It dismissed 153 complaints summarily because they did not raise valid issues of judicial misconduct and, instead, were complaints about the outcomes of cases or otherwise were outside the Commission's jurisdiction. Another 111 complaints were dismissed on the same grounds after Commission staff examined court documents or conducted informal interviews.

Examples of complaints dismissed because they did not establish ethical misconduct include a claim that the judge did not strike a pleading filed by the complainant's attorney raising an insanity defense, an allegation that the judge denied a disqualification motion filed because the judge presided over another case involving the same litigant, and a complaint that the judge refused to allow the litigant's mother, who is not a lawyer, to act as his attorney.

Of the remaining 23 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations, and conducted inquiries or investigations. Of those, 6 complaints were dismissed after the Qualifications Commission concluded the judges had not violated the Code of Judicial Conduct. The Qualifications Commission privately cautioned 9 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 or not the conduct was intentional or inadvertent, whether the judge has a history of meritorious complaints, and other mitigating or aggravating circumstances. The subjects of the nine cautions, in order of frequency, related to *ex parte* contacts (3), deviations from precedent or court rules (3), misuse of the court's power (2), inappropriate demeanor (2), allowing the appearance of partiality (2), delayed rulings (1), injudicious public comment (1), inattention to court administration (1), and failure to disqualify (1). (Some cautions related to more than one violation.)

In one case, the Qualifications Commission agreed to close its investigation into alleged conflicts of interest between the judge's businesses and his judicial obligations on the condition that the judge immediately resign. The Commission found probable cause in another case to file disciplinary charges against the Honorable Donald Currie after his arrest and conviction for public intoxication. Judge Currie agreed to accept a Commission Admonition in lieu of public charges; therefore, charges were not filed, and the Commission publicly admonished him. (Public Admonition of the Honorable Donald Currie, Carroll Circuit Court, May 27, 2008.)

During the fiscal year, the Qualifications Commission also filed charges against two judicial officers. In *Matter of Broyles*, Cause No. 49S00-0804-JD-156, and in *Matter of Hawkins*, Cause No. 49S00-0804-JD-157, the Commission charged Commissioner Broyles and Judge Hawkins with misconduct after a 2-year delay in effectuating an inmate's release from prison and for other instances of neglect and mismanagement. Four inquiries or investigations were pending at the conclusion of the fiscal 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.