

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND TECHNOLOGY COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:36 P.M. on January 28, 2008, in Room 526-S of the Capitol.

All members were present except Representatives Johnson, McLeland, Sloan, Tapanelli, Wilk, and Frownfelter, all of whom were excused.

Committee staff present:

Jennifer Thierer, Kansas Legislative Research Department
Rena Jefferies, Office of the Revisor of Statutes
Gary Deer, Committee Secretary

Conferees appearing before the committee:

Carol Green, Clerk, Kansas Supreme Court, and Secretary, Commission on Judicial Qualifications
Patrick Brazil, former Chief Judge, Kansas Court of Appeals, and Commission member
Carolyn Tillotson, Leavenworth, former Kansas Senator and non-judge Commission member
Stan Hazlett, Disciplinary Administrator, Office of the Disciplinary Administrator

Others attending:

See attached list.

Carol Green, Clerk, Kansas Supreme Court, and Secretary, Commission on Judicial Qualifications, explained how the Commission handles the complaint process. She noted the list of Commission members (Attachment 1) and referenced the Commission's 2006 Annual Report (Attachment 2) and the Rules Relating to Judicial Conduct (Attachment 3). She gave a brief history of the Commission, which was established by the Kansas Supreme Court in 1974 as a nine-member body combining both investigative and judicial functions, a structure that was revised in 1999 to a 14-member body divided into two panels so that a complaint went to one panel and was adjudicated by the second panel. All members are appointed by the Supreme Court for four years with no term limits; membership is composed of six active or retired judges, four lawyers, and four non-lawyers, all with equal voice.

Ms. Green then outlined the complaint procedure, which can be filed by anyone with a complaint regarding the judicial process. She distinguished between appealing a judge's ruling (a non-Commission matter) and a judge's behavior or ethical violation (under the Commission's jurisdiction). Noting that some inquiries by the public can be settled over the phone, she said a formal complaint must be written; she observed that 221 written complaints were filed in 2006. When a complaint is filed, it is sent to Commission members, reviewed by the panel, and either placed on the docket or determined to be an undocketed complaint and thus not under the purview of the Commission.

Once a complaint is placed on the docket, a letter is sent to the relevant judge asking for a formal response and is also referred to an investigator, who will gather information relating to the alleged ethical lapse. Ms. Green said of the 221 complaints in 2006, 38 were docketed for further investigation. By comparison, in 2004 57 were docketed. After the investigation is completed, the Commission has several options: dismiss the complaint, issue a formal letter of caution to a judge, send a letter noting an unproven allegation which,

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if true, would be grounds for censure, issue a cease-and-desist order, or proceed to a formal hearing, at which point the second panel would be called to adjudicate the case through a public hearing. If the charges are found to be valid, the panel can admonish the judge, issue a cease-and-desist order, or refer the matter to the Supreme Court. Ms. Green said in 2006 two cases went to a formal hearing, but neither went to the Supreme Court.

Ms. Green responded to several questions from members. She said a complainant can ask that the Commission reconsider its decision, but there is no appeals process beyond the Commission. She replied that during an investigation the Commission and investigators are required to hold all information in confidence, but that requirement does not apply to the judge or the complainant. Further, she said that in 2006 there were three public cease-and-desist orders and that the details are available through the Commission office. She responded that frequently a commission member will recuse him/herself from certain cases.

Patrick Brazil, former Chief Judge, Kansas Court of Appeals, and Commission member responded to members' questions. He said many complaints were matters over which the Commission has no jurisdiction. He replied that in smaller counties, the district judge handles criminal, civil, and domestic cases; but in larger counties judges are assigned to specific kinds of cases, further noting that in family courts there is no requirement for an attorney to represent the principals in a case, with the exception that parents are assigned an attorney in Child-in-Need-of-Care cases. He observed that Commission members are unpaid, dedicated, and conscientious.

Carolyn Tillotson, Leavenworth, former Kansas Senator and non-judge Commission member, commented that as a lay member she sees herself as a mediator for the ordinary citizen who files a complaint.

Responding to further questions, Judge Brazil said Sedgwick is a large county, so receiving a large number of complaints from that county would not be surprising. He commented that because Sedgwick County judges are elected, an opponent might make disparaging remarks about a judge, but there seems to be no higher percentage of complaints from the average litigant. Ms. Tillotson replied that federal complaints are referred to the federal judiciary, which has its own independent review process. She acknowledged that the Commission gets some complaints regarding the quality of the judiciary.

Stan Hazlett, Disciplinary Administrator, Office of the Disciplinary Administrator, said his office is under the jurisdiction of the Supreme Court, not the Bar Association, and that the fee-funded office investigates complaints against attorneys. He traced the anatomy of a complaint ([Attachment 4](#)), provided complaint statistics for the past year ([Attachment 5](#)), and listed the names of attorneys against whom complaints had been filed during the past year ([Attachment 6](#)). He said that oral complaints often can be resolved over the phone. If not, and if the complaint does not deal with an ethical violation, a letter is sent to the attorney against whom the complaint is lodged; he/she responds, and the attorney's response is sent to the complainant. Of the 890 complaints received in 2007, 300 were docketed for further investigation; investigations are carried out either by the Office's investigators or by a volunteer attorney. After the investigation is completed, a review committee of three attorneys decides if there is probably cause for action against the attorney, after which the issue becomes a public matter. (However, as with the Commission, the complainant and the respondent are not governed by confidentiality.) The review panel may admonish the

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attorney or file formal charges against the attorney; if the latter, the case is heard by a panel of three attorneys appointed by the Supreme Court.

Responding to questions, Mr. Hazlett said there are 10,000 active attorneys and 3000 on inactive status in Kansas. The 10% complaint ratio is consistent with national statistics. He replied that lawyers investigating lawyers works well, since most attorneys want to weed out unethical or impaired attorneys. He commented that an attorney will know who filed a complaint and will know who is doing the investigation. A member commended the Disciplinary Office for functioning effectively.

The meeting was adjourned at 4:44 p.m. The next meeting is scheduled for Tuesday, January 29, 2008.