

State Court System Won't Reveal Key Details on Judicial Discipline

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By Rick Brundrett - The Nerve

For the second time in recent months, the S.C. Judicial Department has sided with secrecy about how the court system operates.

In October, the department denied The Nerve's request under the state Freedom of Information Act (FOIA) for a list of judicial staff making at least \$50,000 annually – records which are considered public for any government agency under the FOIA.

Less than three hours after The Nerve published a November [story](#) revealing the denial of the request, the department [released](#) the salary list without explanation.

On Dec. 10, The Nerve submitted another written FOIA request to the department asking that it identify which types of judges – magistrate, family, circuit and appellate court judges among listed examples – received disciplinary sanctions imposed by the court system or had other official actions taken against them, as indicated statistically in annual reports published by the department.

The Nerve at the same time also requested the identities of all current members of the 26-member state Commission on Judicial Conduct, an arm of the S.C. Supreme Court – made up mainly of judges under state law – that is supposed to police judges' ethical conduct.

Court officials never responded to the December request, despite two written reminders on Jan. 13 and Monday, sent jointly to Supreme Court chief justice Donald Beatty – the administrative head of the state court system – and department spokeswoman Ginny Jones, that they had missed a legal deadline under the FOIA to respond.

Contacted by The Nerve about the department's failure to respond, Taylor Smith, an attorney for the South Carolina Press Association, issued the following written statement:

“When a public body, like the South Carolina Judicial Branch and its Court Administration, does not respond to an open records request under the FOIA within the required 10 or 20 business days, that request is deemed approved, and the requester should then expect the information to be provided in the next 30 or 35 calendar days.”

If the requested records aren't provided by the final deadline, “then a violation of state law has occurred, and the requester will likely be the prevailing party in a lawsuit to get the information,” he said.

Smith added: “Should this change in a case because the defendant is the administration over judges in the state? No, at least not if no one is above the law under our state constitution and laws.”

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Smith concluded that “when any public body goes silent after an FOIA request is made and the person then has to consider whether to hire an attorney to force a response, then the statute’s stated purpose of making it ‘possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access’ is certainly frustrated, and efforts of achieving government transparency take a hit.”

The Nerve, through its parent organization, the South Carolina Policy Council, is an associate member of the press association.

In 2019, The Nerve [revealed](#) that over the previous 17 fiscal years, state court officials issued more than 250 private “letters of caution” to judges statewide – the most common type of action taken on complaints that were not dismissed. But the records reviewed then by The Nerve didn’t indicate which types of judges received caution letters.

Because details of allegations against judges generally have to be kept secret under court rules if no formal misconduct charges are filed, the public usually has no way of knowing the seriousness of the case or whether it warranted stronger disciplinary action.

Ethical rules for judges, such as remaining impartial and being courteous to litigants, are contained in the “Code of Judicial Conduct” and [listed](#) on the Judicial Department’s website.

The Nerve’s Dec. 10 FOIA request asked for a breakdown of which types of judges received caution letters or disciplinary sanctions, based on statistics in annual reports for fiscal years 2016 through last fiscal year, which ended June 30.

Under the FOIA, the department had 20 business days to indicate whether the requested records exist. That deadline has since passed, which means, under state law, that the request “must be considered approved as to nonexempt records or information.”

In South Carolina, the Legislature elects the Supreme Court chief justice, who heads the Judicial Department. South Carolina and Virginia are the only states where their legislatures play primary roles in selecting judges.

The Nerve last month [revealed](#) that S.C. House speaker Jay Lucas, R-Darlington, who controls half of the appointments to a 10-member committee that nominates judges for election, wants a constitutional amendment to increase the total number of Supreme Court justices from five to seven, and also is the lead sponsor of a related bill that would keep the Legislature in control of electing those judges.

Beatty, a former House member, convinced lawmakers in 2019 to give himself and other judges a 33% pay hike.

Few judges disciplined

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Over the past 17 fiscal years, 201 to 2017, private caution letters were issued to S.C. judges – 83% of the collective 148 public or private disciplinary actions taken during the period, The Nerve found in a review of annual department reports. No judges or types of judges who received caution letters were identified in the reports.

Over the same period, a collective 1,249 complaints were filed against all types of judges, according to the reports.

Caution letters are not considered official sanctions under state court rules and involve no misconduct or minor misconduct that doesn't warrant a formal sanction. But if a judge formally agrees to accept a written warning, he or she has to admit to "any or all of the allegations of misconduct," according to the rules.

Under court rules, caution letters can be issued, depending on the situation, by the Supreme Court, Commission on Judicial Conduct or Office of Disciplinary Counsel (ODC), the Supreme Court's investigative arm.

Sanctions against judges include confidential "admonitions," public reprimands, suspensions or removal from office. The Nerve's 2019 review found that seven judges were removed from office over the previous 17 fiscal years – none since fiscal year 2011.

Court records show that in recent years, most complaints against judges were dismissed after an initial review by the ODC, which is headed by John Nichols. Over the past five fiscal years, the ODC dismissed a total of 793 complaints after initial review – nearly 67% of the total 1,187 dismissed complaints during the period, The Nerve's latest review found.

Reasons for the dismissals were not specified in the annual disciplinary reports. Court officials generally have contended that complaints often are dismissed because litigants were upset about decisions made by judges in their cases, though they didn't allege any ethical violations by those judges.

Yet because the ODC doesn't reveal its reasons for dismissing a particular case, the public has no way of judging whether the dismissal was warranted.

Under court rules, the Commission on Judicial Conduct can file formal misconduct charges against judges and conduct hearings on those charges. The Supreme Court has final say on any imposed sanctions.

The Supreme Court appoints the 26-member commission, made up of 10 circuit, family or master-in-equity judges; four magistrate, municipal or probate judges; four lawyers in the state who have never held a judicial office; and eight public members. Given that makeup, judges and lawyers – not the general public – control the commission.

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The Judicial Department's website lists Thomas W. Cooper of Manning, a semi-retired circuit judge, and circuit judge George McFaddin of Sumter as the commission's chairman and vice chairman, respectively, though the other 24 members aren't identified.
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