

Secrecy Still Order of the Day in S.C. Court System

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By Rick Brundrett - The Nerve

File # 1135
File # 1135 complaint is filed against a South Carolina judge, in most cases the public will never learn the details.

That's because court rules adopted by the five-member S.C. Supreme Court – the state's top court – largely ensure secrecy in the process.

For example, under court rules, misconduct proceedings against judges and related records become public if formal charges are authorized by a seven-member investigative panel of the 26-member Commission on Judicial Conduct, which is appointed by the Supreme Court.

But in the last 10 fiscal years, no formal charges were filed by investigative panels, according to annual commission reports reviewed by The Nerve.

Instead, of the total 3,016 received and pending complaints during the period, 2,553, or nearly 85%, were dismissed – the vast majority by the Office of Disciplinary Counsel (ODC), the Supreme Court's investigative arm, with the remainder dropped by investigative panels.

For complaints that weren't dismissed, judges typically were issued a private "letter of caution," which isn't consider an official sanction under court rules and involves no misconduct or minor misconduct that doesn't warrant a formal sanction.

The Nerve's review found that as many as 97 caution letters were issued from fiscal 2011 through last fiscal year, which ended on June 30. No judges who received the letters – or even the types of courts in which they served – were identified in the annual commission reports.

Under court rules, a disciplinary agreement between a judge and the ODC that results in a caution letter issued by an investigative panel "shall not be available to the public at any time."

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

Of the sanctions issued by the Supreme Court over the past 10 fiscal years, reprimands – the least-serious public sanction – were the most common, The Nerve's review found. Annual commission reports showed a total of 16 complaints – often against low-level magistrates, according to court records – over the period that were handled through reprimands.

Besides reprimands, sanctions against judges include confidential "admonitions," suspensions or removal from office. The Nerve in 2019 [revealed](#) that seven judges were removed from office over the previous 17 fiscal years – none since 2011.

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Under court rules, a hearing panel of the Commission on Judicial Conduct holds hearings if charges are authorized by a separate investigative panel. The hearing panel makes recommendations to the Supreme Court, which has the final say on sanctions.
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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 Commission on Judicial Conduct is 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.

Court silence

The Nerve on Dec. 10 asked the state Judicial Department under the S.C. Freedom of Information Act (FOIA) to identify which types of judges – magistrate, family, circuit and appellate court judges among listed examples – received disciplinary sanctions or caution letters in recent years.

The annual disciplinary reports give breakdowns on filed complaints by type of court, though they don’t identify which types of judges were disciplined. Over the past 10 fiscal years, more than half of all filed complaints collectively involved circuit and magistrate judges, The Nerve’s review found.

Neither Donald Beatty, the Supreme Court chief justice and administrative head of the state court system, nor court spokeswoman Ginny Jones responded to The Nerve’s December FOIA request by the initial legal deadline, which was the subject of a [story](#) last month.

They also missed a final deadline under the FOIA to provide the requested statistical records. Taylor Smith, an attorney for the South Carolina Press Association, told The Nerve for last month’s story that a “violation of state law has occurred” whenever requested records aren’t provided by the final deadline.

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

When The Nerve asked that the statistical records be released by noon Tuesday for this story, Jones in an email response Tuesday morning said that “we do not track that information.”

She also said the department’s general position on the FOIA is that it “does not apply to the Judicial Branch.”

The department, however, on Tuesday released the full membership list of the Commission on Judicial Conduct. The Nerve had requested the list, which isn’t included on the department’s website, under the FOIA.

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The open records law does not exempt the taxpayer-funded court system from providing records dealing with its operations. In October, the department denied The Nerve's request for a list of judicial staff making at least \$50,000 annually – records which are considered public for any government agency under the FOIA.
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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.

Legislative control

In South Carolina, the Legislature elects Supreme Court, Court of Appeals, Administrative Law Court, circuit and family court judges. South Carolina and Virginia are the only states where their legislatures play primary roles in selecting judges.

Supreme Court chief justice Beatty, who is a former House member, convinced lawmakers in 2019 to give himself and other judges a 33% pay raise, as The Nerve [reported](#) then.

In January, The Nerve [revealed](#) that 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. He also is the lead sponsor of a related bill that would keep the Legislature in control of electing those judges.

Both proposals were referred to the House Judiciary Committee.

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