

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Fiscal Year 2011-2012

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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 his 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 his designee), the elected and appointed Commission members as of June 30, 2012 were Molly Kitchell of Zionsville; Fred McCashland of Indianapolis; James O. McDonald, Esq., of Terre Haute; Jean Northenor of Warsaw; John D. Ulmer, Esq., of Goshen; and William E. Winingham, Jr., Esq., of Indianapolis. John O. Feighner, Esq., of Fort Wayne and Mike Gavin of Warsaw also served during the fiscal year. The Nominating Commission met on eleven occasions, and the Qualifications Commission met seven times during the fiscal year.

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 the Governor appoints one of the nominees to fill the vacancy.

On December 6, 2011, Chief Justice Randall T. Shepard announced that he would retire from the Indiana Supreme Court in March 2012. After publicizing the vacancy, the Nominating Commission conducted interviews of fifteen candidates. The Commission completed its evaluation of the candidates in February 2012 and sent three names to the Governor for his selection of Chief Justice Shepard’s replacement: Judge Cale J. Bradford of the Indiana Court of Appeals; attorney Mark S. Massa of Indianapolis; and attorney Jane A. Seigel of Indianapolis. On March 24, 2012, Governor Daniels appointed Mark S. Massa as the 107th justice of the

Indiana Supreme Court.

The Nominating Commission also had public conversations on May 15, 2012 with the justices in order to hear their thoughts on the most important qualities and attributes for a chief justice to possess. After hearing from the current justices, the Commission selected Justice Brent E. Dickson as the next Chief Justice of Indiana.

On April 5, 2012, Judge Carr L. Darden officially announced that he would retire from the Court of Appeals of Indiana in July 2012. After publicizing the vacancy, the Nominating Commission conducted interviews of fourteen candidates. The Commission completed its evaluation of the candidates in June 2012 and sent three names to the Governor for his selection of Judge Darden's replacement: Marion Superior Court Judge Robert R. Altice, Jr.; Indianapolis attorney Patricia Caress McMath; and Madison Circuit Court Judge Rudolph R. Pyle, III.

On April 2, 2012, Justice Frank Sullivan, Jr. announced that he would be stepping down from the bench. During this fiscal year, the Nominating Commission set an application deadline and interview schedule to evaluate candidates for the vacancy.

The Nominating Commission also certifies former judges as senior judges to help qualifying courts with their caseloads. During this fiscal year, the Nominating Commission certified two new senior judges and recertified 98.

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 fiscal year.

The Qualifications Commission considered 389 complaints alleging judicial misconduct this fiscal year. It dismissed 174 complaints summarily because they did not raise valid issues of judicial misconduct and, instead, were complaints about the outcomes of cases or were otherwise outside the Commission's jurisdiction. Another 181 were dismissed on the same grounds after Commission staff examined court documents or conducted informal interviews.

Of the remaining 34 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations and conducted inquiries or investigations. Of those, four complaints were dismissed after the Qualifications Commission concluded the judges had not violated the Code of Judicial Conduct, one complaint was dismissed without prejudice, two complaints were dismissed when the judges took remedial actions, and one investigation was closed for administrative reasons. The Qualifications Commission sent advisory letters or privately cautioned seventeen 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.

The Qualifications Commission concluded one case against a judge this fiscal year by issuing a public admonition in lieu of filing charges. The Commission found probable cause to file disciplinary charges against Judge Rebekah F. Pierson-Treacy for making inappropriate statements in a campaign fundraising invitation which gave the appearance that specific campaign contributions could result in particular rulings. Judge Pierson-Treacy agreed to accept a public admonition in lieu of charges; the Commission publicly admonished her and charges were not filed. (Public Admonition of the Honorable Rebekah F. Pierson-Treacy, Marion Superior Court, November 29, 2011.)

During the fiscal year, the Supreme Court resolved one disciplinary case filed by the Commission. After accepting a conditional agreement submitted by the Commission and the judge, the Indiana Supreme Court suspended Judge Jeffrey A. Harkin for 60 days without pay in *Matter of Harkin*, 958 N.E.2d 788 (Ind. 2011). The parties agreed that Judge Harkin abused his judicial authority and committed conduct prejudicial to the administration of justice by referring litigants to a *de facto* traffic school deferral program that had not been authorized by state statute and then dismissing the litigants' tickets without any dismissal request from the prosecutor. The parties also agreed that Judge Harkin failed to promote public confidence in the independence, integrity, and impartiality of the judiciary when he made statements during one case attempting to dissuade a litigant from disputing a traffic ticket.

Seven inquiries or investigations were pending at the end 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/.