

**INDIANA JUDICIAL NOMINATING COMMISSION  
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS**

**2012 Annual Report  
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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 December 31, 2012 were Molly Kitchell of Zionsville; William E. Winingham, Jr., Esq., of Indianapolis; James O. McDonald, Esq., of Terre Haute; Jean Northenor of Warsaw; John D. Ulmer, Esq., of Goshen; and Ryan Streeter of Indianapolis. The Nominating Commission met on eleven occasions, and the Qualifications Commission met seven times during 2012.

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 2, 2012, Justice Frank Sullivan, Jr. announced that he would be stepping down from the bench on July 31, 2012. After publicizing the vacancy, the Nominating Commission conducted interviews of twenty-two candidates. After completing its evaluation of the candidates in August 2012, the Commission sent three names to the Governor for his selection of Justice Sullivan's replacement: Judge Steven R. Nation of Hamilton Superior Court; Judge Loretta H. Rush of Tippecanoe Superior Court; and attorney Geoffrey G. Slaughter of Indianapolis. On September 14, 2012, Governor Daniels appointed Loretta H. Rush as the 108th Justice of Indiana.

On April 5, 2012, Judge Carr L. Darden 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: Judge Robert R. Altice, Jr. of Marion County; attorney Patricia Caress McMath of Indianapolis; and Judge Rudolph R. Pyle, III of Madison County. On August 7, 2012, Governor Daniels appointed Rudolph R. Pyle, III to the Court of Appeals of Indiana.

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 year.

The Qualifications Commission considered 406 complaints alleging judicial misconduct this year. It dismissed 191 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 179 complaints were dismissed on the same grounds after Commission staff examined court documents or conducted informal interviews.

Of the remaining 36 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations and conducted inquiries or investigations. Of those, three complaints were dismissed after the Qualifications Commission concluded the judges had not violated the Code of Judicial Conduct, three complaints were dismissed without prejudice, and one complaint was dismissed when the judge took remedial actions. The Qualifications Commission sent advisory letters or privately cautioned twenty-one 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 two cases against judicial officers this year by issuing public admonitions in lieu of filing charges. Per Admission and Discipline Rule 25, after the Commission determines that probable cause exists to file disciplinary charges, the Commission has discretion to resolve a misconduct matter with a public admonition, rather than proceeding to formal charges and a public hearing, if the judge's consents to this resolution. On July 2012, the Commission formally admonished Magistrate Barbara Johnston, St. Joseph Probate Court, for failing to ensure that a child's father received notice and an opportunity to respond in a child custody matter. The magistrate later granted an *ex parte* change of custody order to the child's grandparents, who left the country with the child. (Public Admonition of the Honorable Barbara Johnston, St. Joseph Probate Court, July 5, 2012).

In November 2012, the Commission publicly admonished Fremont Town Court Judge Martha C. Hagerty of Steuben County for engaging in a series of *ex parte* conversations with the prosecutor and by improperly assuming the role of prosecutor when she attempted to negotiate a resolution with a defendant who had received a traffic ticket. (Public Admonition of the Honorable Martha C. Hagerty, Fremont Town Court, November 19, 2012).

During the year, the Supreme Court resolved two disciplinary cases filed by the Commission. In August 2012, the Commission filed formal disciplinary charges against St. Joseph Probate Judge Peter J. Nemeth, alleging that the judge had made certain derogatory statements toward a litigant in a 2011 guardianship proceeding. This matter was resolved by a private reprimand. (Matter of Nemeth, case no. 71S00-1208-00456, Order Accepting Conditional Agreement for Discipline, December 14, 2012).

In October 2012, the Commission filed formal disciplinary charges against Franklin Superior Court judicial candidate Tammy R. Davis, alleging that she had made false, misleading, and/or inappropriate statements during her judicial campaign about the character and conduct of the

incumbent judge. (Matter of Davis, case no. 24S00-1210-JD-610). At the end of the calendar year, a panel of masters had been appointed to hear the case.

Four inquiries or investigations were pending at the end of the year.

The Nominating Commission and Qualifications 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/](http://www.IN.gov/judiciary/jud-qual/).

