

STATE OF ILLINOIS
JUDICIAL INQUIRY BOARD



REPORT
FISCAL YEAR 2011 and FISCAL YEAR 2012

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To the Citizens of the State of Illinois;

The Illinois Judicial Inquiry Board is pleased to present its Report for fiscal years 2011 and 2012.

The purpose of this report is to explain the constitutional basis of the Judicial Inquiry Board and to describe the Board's jurisdiction and procedures. The report contains information describing how the Board functions and the procedures utilized by the Board in processing complaints against Illinois state court judges.

The Illinois Constitution charges the Judicial Inquiry Board with the responsibility of receiving and investigating complaints of ethical misconduct or physical or mental incapacity made against judges serving in the state courts of Illinois. When warranted, it is the responsibility of the Judicial Inquiry Board to file a complaint against a judge with the Illinois Courts Commission. The Illinois Courts Commission has the authority to remove a judge from office, retire a judge, suspend the judge with or without pay, censure the judge, or issue a reprimand. The penalty assessed by the Illinois Courts Commission lies solely within its discretion and is not appealable.

An important role of the Judicial Inquiry Board is to not only prosecute complaints made against judges in the State of Illinois, when warranted, but also to determine which complaints have no merit. The closing of complaints against judges at the discretion of the Judicial Inquiry Board, relieves members of the judiciary from exposure to baseless public complaints that could undermine the independence of the judiciary. By both closing complaints against judges and bringing complaints against judges before the Illinois Courts Commission, the Judicial Inquiry Board meets its constitutionally mandated role in protecting the integrity and independence of the judiciary.

I hope you find this report useful.

Very truly yours,

A handwritten signature in black ink that reads "Donald C. Hudson".

Donald C. Hudson
Justice of the Illinois Appellate Court, 2nd District
Chair, Judicial Inquiry Board

JUDICIAL INQUIRY BOARD

MEMBERSHIP

Honorable Donald C. Hudson - Chair, Judicial Member

Attorney Cary J. Collins – Vice Chair, Legal Member

Attorney Tom Leahy – Legal Member

Attorney Bruce R. Meckler – Legal Member

Dr. Clem Mejia - Public Member

Gloria Morningstar - Public Member

Honorable Edward Washington, II - Judicial Member

STAFF

Attorney Kathy D. Twine - Executive Director & General Counsel

Wade D. Crosson - Investigator

Scott Sullivant - Investigator

Vincent Phillip - Administrative Assistant

Sharmayne T. Adams – Secretary/Legal Assistant

TRIAL COUNSEL

Attorney John N. Gallo - Sidley Austin LLP

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INTRODUCTION

This Report is published by the State of Illinois Judicial Inquiry Board, the sole disciplinary entity with jurisdiction to inquire into allegations of misconduct and physical/mental incapacity of active Illinois state court judges.

After investigation and upon determination by the Judicial Inquiry Board that there is a reasonable basis to charge a judge with misconduct and/or incapacity, the Judicial Inquiry Board will file and prosecute a formal complaint before the Illinois Courts Commission.

CONSTITUTIONAL AUTHORITY

Beginning in 1960 with California and concluding in 1981 with Washington, every state in the United States and the District of Columbia has established formal procedures to address questions of judicial misconduct and physical/mental incapacity. The majority of states created judicial disciplinary systems by constitutional provision and a minority have done so by legislation. The present Illinois system was established by Article VI of the Illinois Constitution adopted in 1970, effective July 1, 1971, as amended, effective November 23, 1998. There is no enabling legislation in Illinois affecting this constitutional scheme.

The applicable provisions of Article VI, Section 15, are as follows:

- (b) A Judicial Inquiry Board is created. The Supreme Court shall select two Circuit Judges as members and the Governor shall appoint four persons who are not lawyers and three lawyers as members of the Board. No more than two of the lawyers and two of the non-lawyers appointed by the Governor shall be members of the same political party. The terms of Board members shall be four years. A vacancy on the Board shall be filled for a full term in the manner the original appointment was made. No member may serve on the Board more than eight years.
- (c) The Board shall be convened permanently, with authority to conduct investigations, receive or initiate complaints concerning a Judge or Associate Judge, and file complaints with the Courts Commission. The Board shall not file a complaint unless five members believe that a reasonable basis exists (1) to charge the Judge or Associate Judge with willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the Judge or Associate Judge is physically or mentally unable to perform his duties. All proceedings of the Board shall be confidential except the filing of a complaint with the Courts Commission. The Board shall prosecute the complaint.
- (d) The Board shall adopt rules governing its procedures. It shall have subpoena power and authority to appoint and direct its staff. Members of the Board who are not Judges shall receive per diem compensation and necessary expenses; members who are Judges shall receive necessary expenses only. The General Assembly by law shall appropriate funds for the operation of the Board.

(e) An Independent Courts Commission is created consisting of one Supreme Court Judge selected by that Court as a member and one as an alternate, two Appellate Court Judges selected by that Court as members and three as alternates, two Circuit Judges selected by the Supreme Court as members and three as alternates, and two citizens selected by the Governor as members and two as alternates. Members and alternates who are Appellate Court Judges must each be from a different Judicial District. Members and alternates who are Circuit Judges must each be from a different Judicial District. Members and alternates of the Commission shall not be members of the Judicial Inquiry Board. The members of the Commission shall select a chairperson to serve a two-year term.

The Commission shall be convened permanently to hear complaints filed by the Judicial Inquiry Board. The Commission shall have authority after notice and public hearing, (1) to remove from office, suspend without pay, censure or reprimand a Judge or Associate Judge for willful misconduct in office, persistent failure to perform his or her duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend, with or without pay, or retire a Judge or Associate Judge who is physically or mentally unable to perform his or her duties.

(f) The concurrence of four members of the Commission shall be necessary for a decision. The decision of the Commission shall be final.

(g) The Commission shall adopt comprehensive rules to ensure that its procedures are fair and appropriate. These rules and any amendments shall be public and filed with the Secretary of State at least 30 days before becoming effective.

(h) A member of the Commission shall disqualify himself or herself, or the other members of the Commission shall disqualify a member, with respect to any proceeding in which disqualification or recusal would be required of a Judge under rules of the Supreme Court, under rules of the Commission, or by law.

If a Supreme Court Judge is the subject of a proceeding, then there shall be no Supreme Court Judge sitting as a member of the Commission with respect to that proceeding. Instead, an alternate Appellate Court Judge not from the same Judicial District as the subject Supreme Court Judge shall replace the subject Supreme Court Judge. If a member who is an Appellate Court Judge is the subject of a proceeding, then an alternate Appellate Court Judge shall replace the subject Appellate Court Judge. If an Appellate Court Judge who is not a member is the subject of a proceeding and an Appellate Court Judge from the same Judicial District is a member, then an alternate Appellate Court Judge shall replace that member. If a member who is a Circuit Judge is the subject of a proceeding, then an alternate Circuit Judge shall replace the subject Circuit Judge. If a Circuit Judge who is not a member is the subject of a proceeding and a Circuit Judge from the same Judicial District is a member, then an alternate Circuit Judge shall replace that member.

If a member of the Commission is disqualified under this section with respect to any proceeding, that member shall be replaced by an alternate on a rotating basis in a manner provided by rule of the Commission. The alternate shall act as member of the Commission with respect to that proceeding only.

(i) The Commission shall have power to issue subpoenas.

(j) Members and alternates of the Commission who are not Judges shall receive per diem compensation and necessary expenses; members and alternates who are Judges shall receive necessary expenses only. The General Assembly shall provide by law for the expenses and compensation of the Commission.

MEMBERSHIP

Biographies of current members and a listing of past members are located in **Appendices A and B.**

THE COMPLAINT PROCESS

Any person may file a complaint with the Judicial Inquiry Board (“the Board”). A complaint form is located in **Appendix I** of this Report. Additional forms may be obtained by writing or calling the Board’s office or by downloading a form from the Board’s website - www.illinois.gov/jib. The complaint, which is required to be submitted in writing, must state facts that substantiate the alleged misconduct and/or incapacity.

When a complaint is made against a judge, the Board acknowledges receipt of the complaint in writing. After an analysis by staff, the complaint and other relevant documents are forwarded to each Board member for review prior to its monthly meeting. At its meeting, the Board determines appropriate action, which may include the following:

- **Close** the complaint because the allegations did not constitute incapacity and/or misconduct under the law and standards of judicial conduct in Illinois. Most often these complaints concern a losing litigant’s subjective perception that justice was not obtained in his or her cause. By closing the complaint, the Board does not pass judgment on the merits of the case. This is the sole responsibility of the Appellate Court. A letter is sent to the complainant informing him or her that the complaint has been closed.
- **Investigate** the complaint. An investigation may entail writing a letter to the judge to request his or her explanation of the matter, reviewing court and non-court documents, interviewing the complainant as well as other witnesses, or monitoring courtrooms. Investigations are continued until the Board has sufficient information upon which to base a final determination.
- **Appear before the Board.** Require the judge to appear before the Board and respond to questions regarding allegations of misconduct and/or incapacity. In this instance, the judge is served with written notice setting forth the allegations against him or her.

After an **investigation** is completed, the complaint and investigative materials are forwarded to each Board member for review prior to its monthly meeting. At its meeting, the Board determines appropriate action, which may include the following:

- Close the complaint because of insufficient cause to take further action.
 - Close the complaint, but monitor the judge’s courtroom.
 - Close the complaint and issue the judge a private letter of admonishment or caution.
- Note:** In each of the above instances, a letter is sent to the complainant informing him or her that the complaint has been closed.
- Require the judge to appear before the Board and respond to questions regarding allegations of misconduct and/or incapacity. In this instance, the judge is served with written notice setting forth the allegations against him or her.

In instances where the Board requires the judge to **appear**, the Board may take the following action after the judge's appearance:

- Close the complaint.
- Close the complaint, but monitor the judge's courtroom.
- Close the complaint and issue the judge a private letter of admonishment or caution.

Note: In each of the above instances, a letter is sent to the complainant informing him or her that the complaint has been closed.

- File formal charges against the judge with the Courts Commission.

In those cases where the Board does **file a formal complaint** with the Courts Commission, the Board serves as prosecutor in the proceedings before the Commission. If the Commission sustains the Board's complaint, it has the sole authority to impose the following sanctions:

- Remove from office
- Suspend without pay
- Censure
- Reprimand
- Suspend, with or without pay, or retire a judge who is physically or mentally unable to perform his or her duties

A flow chart of the complaint process is located in **Appendix C**.

The Board has only limited authority to correct perceived shortcomings in the administration of justice. It cannot intervene in ongoing litigation, have a judge removed from a case, review judicial decisions, take action against judges for being "too hard" or "too soft" in sentencing or for setting bond "too high" or "too low". The Board has **no jurisdiction** to investigate allegations of misconduct and/or incapacity against retired judges, lawyers, police officers, court personnel, administrative law judges, federal judges, arbitrators, hearing officers, or anyone other than active judges of the State of Illinois.

Like most other states, the initial investigation by the Board is conducted on a confidential basis. The matter remains confidential until a determination is made to publicly charge a judge with misconduct and/or incapacity. Should someone other than a Board or staff member make public the existence of a Board inquiry or investigation, such disclosure is not within the authority of the Board to address. This constitutional requirement of confidentiality protects the judiciary from unjust criticism and protects those who furnish information to the Board. The confidentiality requirement also means, however, that the Board **cannot** discuss its investigations with third parties and **will not** engage in debate over why it did or did not publicly charge a judge in a particular situation.

The many grievances to the Board that do not result in charges being filed with the Courts Commission are nonetheless helpful in the improvement of the judicial system. Sometimes the judge under investigation will retire/resign prior to a Complaint being filed with the Courts Commission. Also, a complaint of a single instance of alleged judicial impropriety, standing alone,

may not be sufficient to publicly charge a judge before the Courts Commission, but subsequent complaints against the same judge may ultimately call for Board action. The availability of such a mechanism to the public for the expression of grievances is a very real, though intangible, benefit.

The Board has adopted Rules of Procedure pursuant to its Constitutional authority, which are set forth in this Report. The Rules of Procedure of the Courts Commission and the Code of Judicial Conduct are also contained in this Report.

IMPAIRMENT

Alcohol or drug abuse by a judicial officer may suggest a possible impairment in the performance of judicial duties. In the absence of associated judicial misconduct, the Board initially pursues such matters with a view towards intervention. If it appears that instances of misconduct resulted from alcohol or drug abuse, the Board will emphasize treatment while mindful of its public responsibility to charge and prosecute aberrant conduct.

INCAPACITY

A sensitive and difficult problem confronting the Board is the physically and mentally incapacitated judge. This issue can arise concerning a judge who has given many years of able service to the State. Most judges who become physically or mentally disabled retire without any action on the part of the Board. In other cases, the fact that an investigation was initiated may lead to a voluntary decision by the judge to retire.

FISCAL YEAR 2011 (“FY11”) COMPLAINT INFORMATION
(Fiscal Year 2011: July 1, 2010 through June 30, 2011)

During fiscal year 2011, the Judicial Inquiry Board received/initiated **456** complaints against active Illinois state court judges. Statistical information regarding fiscal year 2011 complaints is listed in Tables 1 through 7 below.

FISCAL YEAR 2012 (“FY12”) COMPLAINT INFORMATION
(Fiscal Year 2012: July 1, 2011 through June 30, 2012)

During fiscal year 2012 the Judicial Inquiry Board received/initiated **526** complaints against active Illinois state court judges. Statistical information regarding fiscal year 2012 complaints is listed in Tables 1 through 7 below.

TABLE 1

NUMBER OF COMPLAINTS RECEIVED/INITIATED

Fiscal Year 2011	456
Fiscal Year 2012	526

Note: Some judges had more than one complaint filed against them.

TABLE 2

COMPLAINTS RECEIVED/INITIATED BY JUDICIAL POSITION

JUDICIAL POSITION	FY11	FY12
Supreme Court Judge and Appellate Court Judge	34	25
Circuit Court Judge	269	309
Circuit Court Judge – Associate	152	191
Total	455	525
Candidate for Election	1	1
Total Complaints	456	526

Note: See Appendix D for statistical information concerning number of authorized judgeships.

TABLE 3

COMPLAINTS RECEIVED/INITIATED BY COURT DIVISION

	FY11	FY12
Domestic Relations	136	111
Criminal	163	224
Law	30	28
Municipal	26	26
Probate	17	24
Juvenile	11	7
Small Claims	20	20
Traffic	12	11
Chancery	13	28
County	0	0
*Other	28	47
Total	456	526

***Includes but is not limited to: Personal (off-bench) conduct, political activity, or civic/charitable activities.**

TABLE 4

COMPLAINTS RECEIVED/INITIATED BY SOURCE

	FY11	FY12
Litigant/Family/Friend	414	452
Judge/Attorney	20	35
Other (e.g. news reports, anonymous letters, concerned citizens)	22	39
Total	456	526

TABLE 5

COMPLAINTS RECEIVED/INITIATED BY CIRCUIT

CIRCUIT	FY11	FY12	CIRCUIT	FY11	FY12
Cook	202	243	11 th	12	23
1 st	15	8	12 th	18	17
2 nd	5	4	13 th	7	8
3 rd	5	7	14 th	6	9
4 th	14	5	15 th	7	12
5 th	5	14	16 th	18	18
6 th	11	14	17 th	19	16
7 th	13	27	18 th	14	13
8 th	5	7	19 th	12	16
9 th	9	5	20 th	10	7
10 th	8	11	21 st	3	9
			22 nd	3	7

Note: See Appendix E for counties within each circuit.

TABLE 6

DISPOSITION OF COMPLAINTS

	FY11	FY12
Disposition After Initial Review by Board		
Closed	379	438
Investigations Voted	77	88
Number of Complaints Received/Initiated	456	526
Disposition After Investigation		
Closed	68	62 (2)*
Closed After Request for Written Explanation	4	7 (2)*
*Closed with an Admonishment		
Requests for Judge to Appear before the Board	5(1)*	19(7)*
*Closed with an Admonishment after Appearance		
Retired/Resigned Prior to or After Appearance		2
Note: Some Judges were requested to appear in regard to multiple complaints		

TABLE 7
COMPLAINT ALLEGATIONS

TYPES OF ALLEGATIONS	FY11	FY12
Administrative Misconduct	17	30
Alcohol/Drugs	3	3
Bias, Prejudice, Partiality	168	204
Delay in Scheduling or Deciding a Matter	27	26
Demeanor/Injudicious Temperament (e.g. impatient, rude, conduct that is intimidating and inappropriate language/commentary)	119	115
Ex Parte Communication (one-sided)	36	36
Failure to Recuse/Disqualify/Conflict of Interest	41	38
Illegal Activity	77	77
Judicial Decision/Discretion (e.g. dissatisfaction with court procedures or rulings, use or nonuse of evidence, criminal sentences, custody, general outcome of the case)	338	398
Mental Incapacity	1	7
Physical Incapacity	1	0
Inappropriate Political Activity (e.g. publicly endorsing/ opposing a candidate for public office, personal solicitation of funds, making speeches on behalf of a political organization, misrepresentation of qualifications)	5	8
Bias, Prejudiced or Discrimination (race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status)	37	42
Sexual Misconduct/Harassment	1	4
Inappropriate Conduct Off the Bench (e.g., prohibited charitable, business or personal conduct)	9	4
Violation of Constitutional Rights	134	151
Misconduct by a Candidate	1	1
Prejudgment of a Case	26	17
Abuse of Power	26	41
Comment on Pending/Impending Case	1	1
Other	3	6
TOTAL	1071	1209

NOTE: Total exceeds number of complaints received/initiated because many complaints contained multiple allegations.

**RULES OF PROCEDURE
OF
THE JUDICIAL INQUIRY BOARD**

(Established Pursuant to Article VI, Section 15 (b), (c) & (d), Illinois State Constitution, 1970)

RULE 1 - DEFINITIONS

When used in these Rules:

- (a) "Constitution" means the 1970 Constitution of the State of Illinois.
- (b) "Board" means the Judicial Inquiry Board created by the Constitution, Article VI, Section 15(b), (c) and (d).
- (c) "Commission" means the Courts Commission created by the Constitution, Article VI, Section 15(e), (f) and (g).
- (d) "Judge" means a judge or associate judge of the Supreme Court, the Appellate Court or any Circuit Court of the State of Illinois.
- (e) The term "misconduct" when used in reference to a judge or associate judge means and includes judicial misconduct (as distinguished from physical or mental disability) for which a judge is subject to discipline under the law and Constitution of Illinois and the rules adopted by the Supreme Court pursuant to Section 13(a) of Article VI of the Constitution.
- (f) The term "disability" when used in reference to a judge means a physical or mental disability to perform his duties.

RULE 2 – BOARD PERSONNEL

- (a) The Board shall, with the concurrence of at least five members, designate a Chair and a Vice-Chair, each to serve for a term of one year and until the designation, in like manner, of his or her respective successor.
- (b) The Chair shall be the chief executive officer of the Board, shall preside at all meetings of the Board, and shall perform such other duties and have such other authority as the Board may delegate.
- (c) The Vice-Chair shall, in the absence or disability of the Chair, perform the duties and exercise the authorities of the Chair.
- (d) The Board may hire a staff, including an Executive Director.

RULE 3 - MEETINGS

- (a) Meetings shall be held from time to time pursuant to the call of the Chair or three members of the Board.
- (b) Written notice stating the time and place of meetings shall be given to members of the Board at least two days prior to each meeting.
- (c) Five members of the Board shall constitute a quorum of the Board. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the Board unless the act of a greater number is required by the Constitution or by these Rules of Procedure.
- (d) Any action, except a determination to file a complaint, required to be taken by the Board or at any meeting of the Board shall be deemed the action of the Board if all members of the Board execute, either before or after the action is taken, a written consent thereto and the consent is filed with the records of the Board.

RULE 4 - EXERCISE OF THE POWERS OF THE BOARD

- (a) The Board (1) on its own motion, or (2) in response to information received by it tending to suggest that a judge is guilty of misconduct or is suffering from a disability, and which is not, on preliminary examination or inquiry, determined to be patently frivolous or unfounded, may initiate and conduct an investigation to determine whether a reasonable basis exists for the filing of a complaint with the Commission. During an investigation, the Board may request a judge voluntarily to appear and discuss issues relating to conduct under investigation.
- (b) Following an investigation, the Board may determine that a reasonable basis exists to charge a judge with misconduct or disability in a complaint filed with the Commission. Such determination shall require the concurrence of not less than five members of the Board.
- (c) In determining whether a reasonable basis exists to charge a judge with misconduct or disability, the Board will consider the rules of conduct for judges and associate judges adopted by the Supreme Court of Illinois, the provisions of Sections 15(c) and 15(e) of Article VI of the 1970 Illinois Constitution and Section 13(b) of Article VI of the 1970 Illinois Constitution.
- (d) The Board shall, before proceeding to a determination that a reasonable basis exists to charge the judge before the Courts Commission, give the judge written notice of the substance of the proposed charge. This written notice will set forth a date, place and time at which the judge shall be required to appear before the Board, accompanied by counsel if the judge so elects.
- (e) During this required appearance before the Board, the judge shall be questioned by the Board concerning the proposed charge, and the judge will be given the opportunity to make such statement in respect to the proposed charge as he/she may desire. In addition, the judge will be

given the opportunity to present to the Board such information, oral or written (including the names of any witness he/she may wish to have heard by the Board) in respect to the proposed charge as he/she may desire. Such written information and names of witnesses shall be forwarded to the Board not less than 5 days prior to the judge's appearance. A judge may, upon concurrence of the Board, in his/her own person or through counsel, in writing waive his/her required appearance before the Board to respond to charges. (Amended effective April 10, 1998.)

(f) No hearing of or appearance before the Board shall be continued except upon written motion supported by good cause. No hearing of or appearance before the Board shall be continued more than once except under extraordinary circumstances.

(g) The Board shall not disclose the identity of any informant or complainant or any witness unless the Board shall determine that such disclosure is required by the circumstances of the case.

(h) The Board shall not be bound by formal rules of evidence.

(i) Nothing contained in these Rules shall be construed as granting any judge the right to examine or cross-examine witnesses who may be heard by the Board or to have subpoenas issued by the Board on his behalf, provided, however, that the Board, in its discretion, may permit such action.

(j) Upon a finding by the Board that a reasonable basis exists for the filing of a complaint against a judge before the Commission, the Board shall designate one or more licensed attorneys-at-law who are not members of the Board to conduct the prosecution of the complaint before the Commission.

(k) Where the Board determines that a judge's conduct does not warrant initiation of formal proceedings at that time, the Board may issue a letter to the judge, calling the judge's attention to conduct which should be avoided in the future. (Adopted effective, April 10, 1998.)

RULE 5 - CONFIDENTIALITY

(a) The proceedings of the Board and all information and materials, written or oral, received or developed by the Board in the course of its work, insofar as such proceedings and information or materials relate to the question of whether a judge is guilty of misconduct or suffers from disability, shall be confidential and privileged as a matter of law.

(b) When the Board has conducted an investigation but determined not to propose any charges to the judge in question, the Board shall by letter notify the judge and the person, if any, who had brought the matter to the attention of the Board, that such a determination has been made; provided, however, that no such information need be furnished to the judge unless it appears to the Board that he knows, or has reason to know, that a communication was made about him or her to the Board or that the Board conducted an investigation which involved the judge.