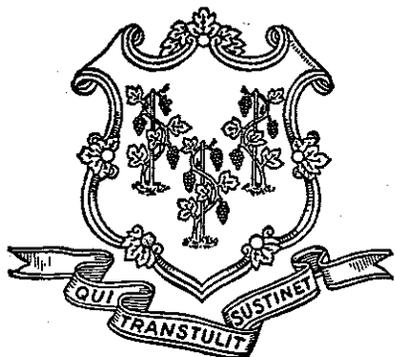


**JUDICIAL REVIEW
COUNCIL**

**Connecticut
General Assembly**



**LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE**

MAY 1992

CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" performance reviews. The committee was given authority to raise and report bills in 1985.

The program review committee is composed of 12 members. The president pro tempore of the senate, the senate minority leader, the speaker of the house, and the house minority leader each appoint three of those members.

1991-1992 Committee Members

Senate

Joseph H. Harper, Cochairman
Max S. Case
Judith G. Freedman
Marie A. Herbst
Kevin P. Johnston
Fred H. Lovegrove, Jr.

House

Robert D. Bowden, Cochairman
Brian J. Flaherty
Barbara M. Ireland
Kevin F. Rennie
Carl J. Schiessl
Jessie G. Stratton

Committee Staff

Michael L. Nauer, Ph.D., Director
George W. McKee, Chief Analyst
L. Spencer Cain, Chief Analyst
Carrie E. Vibert, Chief Attorney
Catherine M. Conlin, Principal Analyst
Jill E. Jensen, Principal Analyst
Anne E. McAloon, Principal Analyst
Brian R. Beisel, Associate Analyst
Maryellen Duffy, Associate Analyst
Renee La Mark Muir, Associate Analyst
Michelle Castillo, Analyst II
Clifford R. Hamilton, Analyst
Marvin P. Lyon, Analyst
Bonnine T. Klare, Executive Secretary

Project Staff

Carrie E. Vibert
Michelle Castillo

Judicial Review Council

Legislative Program Review and Investigations Committee

May 1992



TABLE OF CONTENTS

SUMMARY	i
INTRODUCTION	1
I. Current Law	3
II. Judicial Review Council Operations	11
III. Council Budget and Expenditures	17
IV. Other Sources of Judicial Accountability	23
V. Findings and Recommendations	25
Visibility, Public Information, and Communication	25
Composition and Related Activities	31
Confidentiality	33
Complaint Process and Standards	34
Oversight	37
Disability Hearings	37
APPENDICES	39
A. Legislative History	41
B. Information on Connecticut Judges	44
C. Code of Judicial Conduct	45
D. Council Case Disposition, Source, and Type Statistics	66
E. Attorney Survey Results	71
F. Judge Survey Results	75
G. Sample Letters	79



EXECUTIVE SUMMARY

The Legislative Program Review and Investigations Committee voted to study the Judicial Review Council (JRC) in June 1991. The JRC is Connecticut's judicial conduct review organization, created by the Connecticut General Assembly in 1977 through constitutional authority. The council is charged with the investigation and adjudication of allegations of misconduct and addressing certain disabilities involving Connecticut judges. The JRC does not have the authority to remedy errors of law, which is the province of the appellate process, nor does it have the authority to alter decisions made within the bounds of judicial discretion.

The purpose of the program review study was to assess how the council carried out its charges. The program review committee found the council by its low profile has created a perception that it is not interested in promoting public awareness of what the council does or how it does it. The committee also found the council lacked sufficient written procedures setting out its processes. The council's limited visibility and lack of comprehensive written procedures appear to be due to several factors, including operational tradition, resources, and absence of statutory requirements. Perceptions of how the council is performing its duties are colored by these issues.

The primary aim of the committee recommendations is to improve the visibility of the council and address issues related to perception. The recommendations are set out below.

Recommendations

1. The Judicial Review Council shall establish an administrative office, open during regular business hours, within an existing, centrally located state facility. The council should also be able to hold meetings and hearings at the same location.
2. The Judicial Review Council shall develop ways to inform and educate the public, judges, and lawyers about the council, including, at a minimum:
 - publishing its name, address, and phone number in the state government directory and local telephone directories under an easily accessible and logical heading;
 - developing and distributing a plain language brochure that can assist the public in understanding the operation of the council and the issues that come before it. The brochure should be made available in all court administrative offices as well as provided when an inquiry is received by the council; and
 - speaking before groups.

3. The Judicial Review Council shall prepare an annual activity report summarizing the council's actions for the previous fiscal year, to be submitted on September 1 to the governor, the judicial department, the committee of cognizance, and the judges of the superior court. This report should include:

- the number of complaints received by subject matter and source of complaint;
- a breakdown of complaint dispositions, including the reasons for dismissal, at points in the process; and
- a summary of the conduct for which admonishments were given, (with no individuals identified) along with an explanation as to why no probable cause was found.

4. The Judicial Review Council shall provide more explanation to complainants and judges regarding the status and outcomes of their complaints.

5. The council shall develop and publish comprehensive written policies and procedures that shall include, but not be limited to:

- an explanation of the role of the complainant in an investigation and adjudication of a complaint;
- standards for identifying and addressing conflicts of interest for council members;
- use of previous complaints;
- standards used in probable cause determinations (e.g., weight given to "de minimus" versus "serious" violations, isolated versus pattern of conduct);
- standards used to isolate valid conduct complaints in cases where there are appealable issues beyond the scope of the council; and
- criteria for when a substantial investigation is requested.

6. The Judicial Review Council shall revise its complaint form to include an official administrative address and telephone number and information on the council process in plain language. The form instructions should also be in plain language. The revised form should also contain statutory timeframes.

In addition, the council should ensure that each complainant is provided with the council's plain language brochure and written rules of procedure explaining the council's purpose, authority, jurisdiction, and process.

7. The Judicial Review Council shall be statutorily empowered to maintain its own staff. The council should hire a full-time executive director and an administrative assistant to staff the new administrative office. The council staff would be responsible for carrying out the council's directions and policies. In addition, the executive director should be statutorily empowered to investigate complaints and present evidence gathered as a result of council investigations. Furthermore, the executive director should be responsible for hiring and/or contracting with investigators to conduct investigations as necessary.

8. The Judicial Review Council shall report on the number of complaints and the disposition of those complaints to the judiciary committee regarding any judge up for renomination or nomination to a new court, and make available to the judiciary committee all complaint files concerning a particular judge when he or she comes up for renomination or nomination to another court.

9. The statutory composition of the council shall be changed to the following:

- two superior court judges, appointed by the chief justice with the approval of the legislature, who shall be non-voting members;
- two attorneys admitted to practice in the state, appointed by the governor with the approval of the general assembly, only one of whom may be an active trial attorney, who shall be non-voting members;
- five persons who are not attorneys or judges, appointed as follows; one by the governor; one by the senate president pro tempore; one by the senate minority leader; one by the speaker of the house; and one by the house minority leader;
- Members shall serve for four year terms, limited to one term; membership terms shall be staggered on odd years;
- The terms of all current Judicial Review Council members shall terminate December 31, 1992. Beginning on January 1, 1993, the composition structure as set out above shall be effective, with terms commencing January 1, 1993. Any person serving on the council on or before January 1, 1991, shall be considered to have served one term, and is not eligible for reappointment; and
- the governor shall appoint the chairman from among the lay members.

10. The statutes shall be amended to clarify that the confidentiality provisions do not apply to information known independent of council investigations.

11. The statutes shall be amended to provide for disclosure of the entire record of a complaint for which probable cause has been found.

12. The Council shall inform the complainant that an admonishment was given to the judge, and explain what an admonishment means, including that it is not a finding of misconduct, without discussing the substance of the admonishment.

13. The Council shall be required to initiate an investigation whenever the council has reason to believe that a judge has engaged in conduct in violation of C.G.S. Sec. 51-51i.

14. Council investigations shall include steps to determine if the complaint might evidence a pattern of misconduct and that these steps be recorded in the case record.

15. The council shall establish in its written policies and procedures that when a complaint is filed, the council will review its records for previous complaints about the same judge, and take the previous complaints into consideration in accordance with criteria it will develop and publish.

16. The council shall articulate and publish a plain language definition of probable cause in its policies and procedures.

17. In every case for which a substantial investigation is conducted and the case is dismissed with no finding of probable cause, a written decision of the case shall be produced. The written decision shall summarize the case and the evidence presented and articulate the specific factual and legal bases upon which the finding was made. In cases where an admonishment is given, the decision shall state the specific factual and legal bases upon which the council reasoned an admonishment was called for. All decisions shall be signed by the concurring members including the concurring non-voting members. Any dissenting opinions shall be written and signed by the dissenting members including non-voting dissenting members.

Further, the decisions shall be indexed and compiled.

18. The program review committee shall evaluate the council's performance of its duties and make recommendations to the General Assembly by January 1, 1996, for continuation, modification, or termination of the council. In its evaluation of the council, the program review committee shall have full access to all council records, with no information deleted. The committee and its staff shall maintain the confidentiality of the records in the same manner required of the council. In case of termination, the council shall continue in existence for one year for the purpose of concluding its affairs.

19. The statutes should be amended to prevent a judge from being denied a disability retirement because his judicial term expired during the pendency of an application.

20. Due to the nature of the personal medical history that may be involved in these hearings, the judicial review council hearings on disability shall be confidential and not open to the public.

INTRODUCTION

The Legislative Program Review and Investigations Committee voted to study the Judicial Review Council (JRC) in June 1991. The JRC is Connecticut's judicial conduct review organization, created by the Connecticut General Assembly in 1977 through constitutional authority. The council is charged with the investigation and adjudication of allegations of misconduct and addressing certain disabilities involving Connecticut judges. The JRC does not have the authority to remedy errors of law, which is the province of the appellate process, nor does it have the authority to alter decisions made within the bounds of judicial discretion.

The purpose of the program review study was to review how the council carried out its charges. As part of the study, pertinent state statutes were reviewed as well as the council's legislative history. The committee held a series of hearings on the topic for invited speakers and members of the public. The invited speakers included members of the Judicial Review Council, the Attorney General, the Chief Court Administrator, and the presidents of the Connecticut Judges Association, the Connecticut Bar Association, and the Connecticut Trial Lawyer's Association.

Staff reviewed council expenditure files from the comptroller's office and periodic reports put out by the Judicial Review Council. Staff interviewed the council's executive director and met with representatives of the Connecticut Judges Association. Staff also studied books and articles about judicial conduct organizations, which included information about other state organizations, and reviewed other Connecticut conduct review processes. In addition, nearly 1400 lawyers active in the state's courts were surveyed by the committee, as well as the 173 superior court judges, about their knowledge of and views on the council.

Finally, staff conducted a very limited file review of seven complaints. The committee had wanted to conduct a more in-depth file review, which is standard procedure whenever the program review committee studies an agency complaint review process. The council denied the program review committee access to the files, based on its belief that the current confidentiality statutes did not give it authority to allow the committee access.

During the November 1991 Special Session of the General Assembly, an attempt was made to change the statutes to allow committee access, with strict requirements that the committee maintain any information it received confidentially. The statutory change finally approved provided access to the committee, but only after "names and other identifying information" were deleted by the council. Because of the nature of the council complaint files, and the interpretation of the council about what was identifying information, the physical task of cleansing files for committee review rendered the access allowed under the statutory change useless for many of the committee's needs.

This report is arranged as follows: Chapter I - Current Law; Chapter II - Judicial Review Council Operations; Chapter III - Council Budget and Expenditures; Chapter IV - Other Sources of Judicial Accountability; and Chapter V - Findings and Recommendations.

The appendices contain: the council's legislative history; general information on judges; disposition, case source and type statistics; the Code of Judicial Conduct; the attorney survey and survey results; the judge survey and survey results; and council sample letters.

CHAPTER I

CURRENT LAW

The Connecticut General Assembly was authorized to establish the Judicial Review Council by a 1976 constitutional amendment. Through legislation enacted in 1977, a statutory framework for the council was put in place and it began operations in 1978.¹ The legislative history of the council is set out in Appendix A.

This chapter summarizes the current statutory provisions of the council. Actual council operations are carried out under these statutes, supplemented by the Rules of Procedure adopted by the council.

Declaration of Intent

In 1977, the general assembly adopted a statutory declaration of intent as a preamble to the more specific powers and duties of the council. The declaration states:

The general assembly finds that for the impartial and effective administration of justice in this state:

- (1) the continued independence of the judiciary is indispensable;
- (2) it is in the public interest to foster the dignity and integrity of the judiciary;
- (3) to the foregoing ends it is desirable to establish appropriate mechanisms and procedures for the maintenance of judicial discipline; and
- (4) the mere making of unpopular or erroneous decisions is not a ground for judicial discipline.

Jurisdiction

The Judicial Review Council has jurisdiction over: superior court judges; appellate court judges; supreme court judges; senior judges; state referees; and family support magistrates.²

¹ The Judicial Review Council statutes are contained in Chapter 872a of the Connecticut General Statutes (Secs. 51-51g through 51-51u)

² For purposes of this report, the term "judge" or "judges" will be used to refer to all persons over whom the Judicial Review Council has jurisdiction. For statistics on the judges under council jurisdiction and the system within which they work, see Appendix B.

Probate judges, who are elected, are not within the council's purview, but have their own separate review panel. The conduct for which the council may discipline a judge is set out in statute, and is detailed later in this chapter.

Composition

The current statutory composition of the Judicial Review Council is as follows:

- Three superior court judges elected by members of the superior court (these judges cannot be members of the supreme court);
- Three attorneys admitted to practice in the state appointed by the governor with the approval of the general assembly; and
- Five persons who are not attorneys or judges appointed by the governor and approved by the general assembly.

Council terms are for six years. Council members are not compensated for their services, but are entitled to reimbursement for any reasonable expenses as members.

Statutory Powers and Duties

The council receives, investigates, and makes decisions on complaints subject to the following powers and duties under statute.

- The council shall investigate every written complaint brought before it alleging conduct specified by statute.
- On its own initiative, the council may investigate any judge if the council has reason to believe statutorily proscribed conduct has occurred.
- The council is required to notify the complainant of its receipt of any complaint within five days of receipt.
- Within five days after the initiation of an investigation or receipt of a complaint, the council must notify by registered or certified mail any judge under investigation or against whom a complaint is filed. A copy of the complaint must accompany the notice.
- Any investigation to determine whether or not there is probable cause that misconduct occurred must be confidential unless the judge requests the investigation be open.

- Any individual called by the council to provide information "shall not disclose his knowledge of such investigation to a third party..." unless the judge who is the subject of the complaint requests the investigation and disclosure be open.
- Any person may be compelled by subpoena to appear before the council to testify about any complaint brought to (or by) the council against a judge for alleged statutory misconduct and may be compelled by subpoena to produce books, papers, and documents for examination, which in the judgement of the council or any judge under investigation are relevant to the inquiry or investigation.
- The council may commit for contempt any witnesses for a period no longer than thirty days for violations of the provisions applying to witnesses.
- No later than three business days after the end of any investigation, the council must notify the complainant, if any, and the judge that the investigation has terminated and inform these persons of the investigation results.
- If the council finds no probable cause that statutory misconduct has occurred, but does find the judge has "acted in a manner which gives the appearance of impropriety or constitutes an unfavorable judicial practice", the council may issue an admonishment to the judge recommending a change in judicial conduct or practice.
- If a preliminary investigation indicates probable cause exists that a judge is guilty of statutory misconduct, the council holds an open hearing concerning the conduct or complaint.
- The council must record all open hearing proceedings. No later than 15 days after the close of any hearing the council must publish its findings with a memorandum of its reasons for those findings.
- The council may take one of five actions with respect to a judge based on those findings (detailed on pages 7-8).
- In making any investigation, the council may use the services of the state police, the division of criminal justice, the department of mental health, or any other state agency.
- Any complaint must be brought within a year of when the alleged misconduct occurred or was discovered or reasonably should have been

discovered, with an ultimate three year time limit after the alleged occurrence.

Rights of Judges

Under the council statutes, judges have the following rights.

- Before any probable cause determination, a judge has the right to appear and be heard and to offer any information which may tend to clear the judge of probable cause that misconduct was committed.
- A judge has the right to be represented by legal counsel and examine and cross-examine witnesses at the pre-probable cause stage.
- After a probable cause determination, at the open hearing, a judge appearing before the hearing is entitled to counsel, to present evidence, and to cross-examine witnesses.
- Any judge aggrieved by any decision of the council may appeal the decision to the supreme court. An appeal from a council decision of public censure automatically stays the publication of the censure.

Grounds for Sanctions

The conduct for which the council may sanction a judge is as follows:

- Conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute;
- Wilful and persistent failure to perform his duty;
- Neglectful or incompetent performance of his duties;
- Final conviction of a felony or of a misdemeanor involving moral turpitude;
- Disbarment or suspension as an attorney-at-law;
- Wilful failure to file a financial statement or the filing of a fraudulent financial statement required by statute (C.G.S. Sec. 46a); or
- Temperament which adversely affects the orderly carriage of justice.

- Wilful violation of the statute prohibiting the use of judicial office for financial gain (C.G.S. Sec. 51-39a) or any canon of judicial ethics;

The last sanction listed above references the canons of judicial ethics. The canons are part of the Code of Judicial Conduct, adopted by the Connecticut Superior Court Judges in 1974, with subsequent amendments. The canons are as follows:

1. A judge shall uphold the integrity and independence of the judiciary;
2. A judge shall avoid impropriety and the appearance of impropriety in all his activities;
3. A judge shall perform the duties of his office impartially and diligently;
4. A judge may engage in activities to improve the law, the legal system and the administration of justice;
5. A judge should regulate his extrajudicial activities to minimize the risk of conflict with his judicial duties;
6. A judge should regularly file reports of compensation received for quasi-judicial and extra judicial activities; and
7. A judge should refrain from political activity inappropriate to his judicial office.

The full text of the canons as they appear in the Connecticut Rules of Court, Code of Judicial Conduct, appears in Appendix C.

Actions Council May Take

If the council finds probable cause and holds an open hearing, after the council holds an open hearing, it may take one of the following actions:

- publicly censure the judge;
- suspend the judge for a definite term not to exceed one year;
- refer the matter to supreme court with a recommendation the judge be suspended for a period longer than a year;
- refer the matter to the supreme court with a recommendation the judge removed from office; or

- exonerate the judge of all charges.

If public censure is recommended, the council chairman prepares and forwards the written censure to the applicable judge, the chief justice, the chief court administrator, and the judiciary committee, at least 10 days prior to publication of the censure. The censure is a public record under the state freedom of information laws. An appeal from the council's decision for public censure automatically stays the publication of the censure. If the council exonerates a judge, the copy of the proceedings and report are furnished to the judge.

Other Council Functions

Mental infirmity and addictions. In addition to handling misconduct complaint investigations, the council must also investigate any matter referred to it by the chief court administrator concerning judges who may have mental infirmities, mental illnesses, or drug or alcohol addictions. The confidentiality provisions are the same as with misconduct complaints, including that the investigation be confidential unless the judge requests that it be open. The council may request medical records from the judge, and if the judge refuses, the council may request the judge to submit to an independent medical examination.

The judge has the right to submit information to prove he or she is able to continue judicial duties, to appear at investigation hearings, to have counsel, and to examine and cross-examine witnesses.

If the council finds the judge is not impaired and can fully perform his duties, the chief court administrator can either reassign the judge or modify the judge's assignment. If the council finds the judge is temporarily impaired, the council must ask the judge to seek treatment. If the judge refuses, the council has the same sanctions available as when it finds a judge has engaged in misconduct. If the judge undergoes treatment, the council must monitor the treatment and make status reports periodically to the chief court administrator.

The council must retire a judge, under disability retirement, who is found permanently incapable of adequately fulfilling his or her duties because of mental infirmity, mental illness, or drug or alcohol addiction.

General disability retirement. The council also has jurisdiction over general disability retirement applications for judges, based either on a judge's motion or that of the council. In addition, the council is responsible for disability retirements for certain state employees who participate in a specific retirement plan and holding the following positions: the chief state's attorney, the deputy chief state's attorney, state's attorneys, chief public defender, deputy chief public defender, public defenders, and all compensation commissioners.

Financial disclosure reports. On an annual basis, all judges (except probate) and family magistrates must file financial statements with the Judicial Review Council. The financial statement must include:

- the amount of compensation, date, place and nature of any activity for which the judge received payment, and the name of the payor;
- the name of each security over \$5,000 owned by or held for the benefit of the judge, his or her spouse, or child;
- any trusts established by the judge, his or her spouse, or child for divesting all knowledge and control of assets to avoid a conflict of interest; and
- all real property owned or held for the benefit of the judge, his or her spouse, or child.

The statements must also include the names of all businesses with which the spouse or child is associated. In addition, the statement must include the types of all sources of income over \$1,000 and names and addresses of clients and customers providing more than \$5,000 income to each spouse or child. Fees and honoraria received by the judge, his or her spouse, or child must be reported within 30 days of receipt.

Deliberate non-disclosure of such information is cause for removal from office. Except for the names of customers and clients providing over \$5,000 income to spouses or dependents, the financial statements are public information. If deemed necessary or relevant, the council may use this information in conducting any investigation of the judge.

CHAPTER II

JUDICIAL REVIEW COUNCIL OPERATIONS

The previous chapter set out the statutory requirements under which the council operates. This chapter discusses how the council actually processes complaints from initial receipt to final adjudication. The council has adopted Rules of Procedures to supplement the statutes. First, a few background items pertinent to general council operations will be mentioned.

Background

Staff. Other than the reference to using personnel from other state agencies, the council statutes do not provide any authority to acquire staff. The council has no full-time personnel. Since the council began operations in 1978, Attorney John LaBelle, Sr., a former Hartford State's Attorney, has served as the council's executive director and counsel on a contractual basis.

For the first four and a half years, the executive director worked without pay. He then began receiving an hourly rate, and for the last four and a half years, he has received \$175 per hour. Administrative assistance is provided by employees of the executive director's law firm. At various times, other clerical work is done in the offices of the various council members, for which they may or may not submit claims for reimbursement.

Council investigations are performed by inspectors from the various state's attorneys offices, with one investigator in particular doing the bulk of the work. The council does not reimburse the state's attorneys' offices for the time spent by their inspectors on council investigations.

Official location and meetings. The council meets on average once a month to consider any new complaints received, hold hearings, and make decisions on pending business. The council has no official location and has never had a telephone number listed in any general telephone directory. Its mailing address is a post office box in the town where the executive director's law office is located. The files of the council are maintained at the offices of the executive director.

When the council was first established, according to the executive director, it met in the basement of the Supreme Court building. Early on, the chief justice told the council it could not continue to convene there, and the council began meeting at motel conference rooms. Recently, the council began using space used by other state agencies for some of their meetings.

Reports. The council has no statutory requirement to issue activity reports. Since it began operations in 1978 it has issued three such reports: the first, covering the first two years of council operations; the second, the next five years; and the most recent covering a four-year

period from January 1, 1986, through December 31, 1989. The reports provide background information on the council, including operating procedures and statistics summarizing council activities.

Training. There is no formal training provided to new council members.

Complaint Process

Figure II-1 illustrates the complaint process. The numbers in parentheses represent the numbers of complaints resolved at the steps described in the figure for calendar years 1986 through 1989. For these four years, the council received an average of 36 complaints a year.³ As noted in the figure, in that four year period, out of the 143 complaints disposed of, the council found probable cause in one. In its 14 year history, one additional finding of probable cause has been made.⁴

Complaint receipt. By statute, complaints to the council must be in writing. By council rule, complainants must use forms prepared by the Judicial Review Council, and must make sworn statements. The council rules of procedure are printed on the back of the form. Complaint forms are supposed to be available at each superior court clerk's office or from the executive director of the council via a post office box.

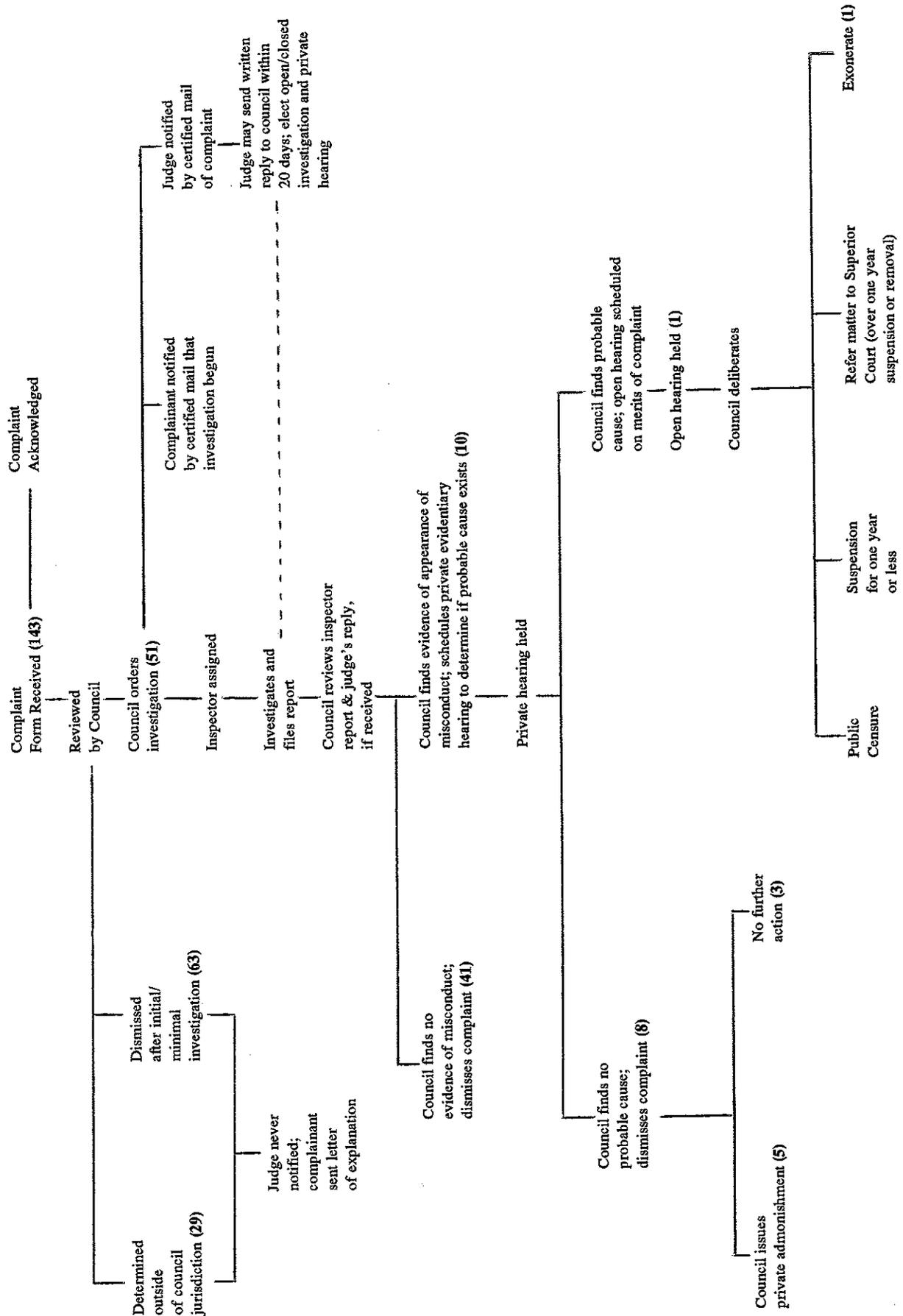
If a complaint comes to the council in a letter, not on the form, and appears to be within the council's jurisdiction, the executive director sends a letter to the complainant along with a form. According to the executive director, if a letter comes in that clearly states a complaint outside the jurisdiction of the council, the person is not asked to resubmit it on the form; the original letter goes to the council.

The statute requires the council to inform the complainant within five days of receipt that his or her complaint was received. According to the executive director, all complaints received by the council are acknowledged with a form letter as soon as they come in, stating that the complaint has been received and that it will be considered at the next council meeting.

³ A complaint represents an allegation of misconduct against one judge. According to the executive director, if several persons independently complain to the council about the same incident concerning the same judge, those will all be counted as one complaint. If one person complains about the conduct of two judges, two complaints will be counted.

⁴ Appendix D contains statistics on Judicial Review Council case disposition, subject matter, and source statistics for selected years.

Figure II-1. Judicial Review Council Complaint Process



The council acts on all complaints received. Every complaint gets a case number, even if it is clear the council has no jurisdiction. All complaints that come in on the appropriate form, and letters not on forms but clearly outside of the council's jurisdiction, are copied and distributed to all council members prior to the next council meeting for screening.

Council screening. The purpose of council screening is to make an initial determination whether the allegations, if true, would be conduct subject to council sanction. First, the council determines if the person being complained about is under its jurisdiction. Examples of complaints received outside its jurisdiction, according to the council, are: complaints against court personnel; attorneys; small claims magistrates, federal judges and family relations officers.

Second, the council must decide whether the substance of the complaint falls within the purview of the council, even where the judge at issues falls under council jurisdiction. An example of a complaint outside the authority of the council is one about a judge's ruling that certain evidence was inadmissible, which is an appealable issue. Also, according to the council, sometimes complaints are received that fail to state any facts illuminating a charge of misconduct. Cases dismissed for these reasons fall under the label "dismissed after initial/minimal investigations."

If the council decides to dismiss a complaint for lack of jurisdiction or because it is outside council authority, members vote and the action appears in council minutes along with the reasons for dismissal, according to the council. The executive director sends a letter to the complainant informing him or her the complaint has been dismissed, and the reasons for the dismissal. The judge who was the subject of the complaint is never notified of the complaint.

Preliminary investigation. If the complaint is within the council's jurisdiction, and the council finds that a complaint "raises a question of judicial misconduct", the council orders the executive director to start an investigation, called a preliminary investigation.

By council rule, the five-day statutory notice to judges is triggered at this point when an investigation is actually ordered. The judge is notified by registered or certified mail that a complaint has been filed. At that time, the judge is also sent a copy of the complaint, a copy of the council rules, and notice under council rules that the judge may send in a written reply to the council within 20 days after receipt of the complaint notice. The judge is also sent a form to elect to open up the probable cause investigation, and also to elect to be heard and offer information, as is his or her right under the statute.

The complainant, who has already received an acknowledgement, is notified at this time by certified mail that an investigation is beginning.

The executive director obtains the use of an inspector from one of the state's attorneys' offices, and directs the investigation. According to the executive director, typically the inspector will: interview the complainant, the subject judge, and other witnesses, and obtain copies of court transcripts, if necessary. The inspector will review the judge's reply. The council has the

authority to subpoena persons during this preliminary investigation, but according to the executive director, does not.

When the inspector concludes his investigation, he writes a report, and attaches any pertinent documents. Each member of the council gets a copy of the inspector's report (but not necessarily all the attachments). The executive director does not prepare any summaries or recommendations as to how the council should proceed.

According to the council, the purpose of the preliminary investigation is to determine if there is an "appearance of misconduct". The council may decide, based on the investigator's report and the judge's statement, there is "no evidence" of misconduct, and will dismiss the case.

Probable cause hearing. If there is an "appearance of evidence of misconduct," the council will schedule a probable cause hearing, with "reasonable notice of time, place, and nature" to the judge. Council rules also provide for "such notice to such other persons as shall be deemed necessary or appropriate under the circumstances." The judge may waive the hearing; according to the executive director, this has never happened.

In preparation for this hearing, the executive director drafts specific charges as to the alleged misconduct, which are reviewed by the council and signed by the council chair. The original complaint at this point is no longer the basis of the misconduct allegation, replaced by the council charges. The charges are sent to the judge, who may respond.

The probable cause hearing is considered part of the investigative stage of the council process. It is private unless opened by the subject judge, and evidence is presented on both sides. The executive director represents the council at this hearing and presents the council's case. All the council witnesses are subpoenaed, and the hearings are recorded.

Probable cause is not defined in the council statute or by council rule. The term refers to a level of belief that is a threshold requirement for many different law enforcement, judicial, and quasi-judicial processes. According to judicial case law, probable cause is the knowledge of sufficient facts to justify a reasonable person in the belief that there are reasonable grounds that judicial misconduct has occurred.

At the end of the hearing, the council may ask the executive director and the judge for briefs elaborating on issues raised in the case.

Post-probable cause hearing determination. After the probable cause hearing, the council either finds probable cause or not. Its findings and votes are set out in its minutes. The decision marks the end of the investigation stage, and triggers the statutory requirement that no later than three business days after the termination of the investigation, the council is to notify the judge and the complainant of the investigation's end and the results.

If the council finds no probable cause, it will dismiss the case, and no further public action is taken. However, the statute provides for the issuance of an admonishment under certain circumstances. These circumstances are when the council finds the judge has "acted in a manner which gives the appearance of impropriety or constitutes an unfavorable judicial practice". An admonishment recommends a change in judicial conduct or practice.

If the council finds there is probable cause misconduct occurred, the council must hold an open hearing to consider the merits of the complaint.

Open hearing. This hearing is run in much the same manner as the probable cause hearing part of the investigation. The level of proof the council uses at this stage is different than the probable cause standard. At this stage, the council must make its determinations based on clear and convincing evidence. A case law definition of clear and convincing evidence is where the evidence "induces in the mind of the [council] a reasonable belief that the facts asserted are highly probably true, that the probability that they are true and exist is substantially greater than the probability that they are false or do not exist." The council has 15 days after the end of the open hearing to make a decision, which it must publish.

At any point in the council's investigation or adjudication process, the council may request legal research from the executive director. For example, the council may want to know how a particular canon of judicial conduct has been applied by other states. If necessary, the executive director will review case law and activities in other states.

CHAPTER III

COUNCIL BUDGET AND EXPENDITURES

The Judicial Review Council is one of several miscellaneous accounts administered by the State Comptroller. Annually, the council prepares and submits an itemized budget estimate to the comptroller's office. The comptroller's office then submits the estimate along with its own budget request.

Budget and Expenditure Trends

Table III-1 describes the council's appropriations and expenditures for FYs 86-91. Figure III-1 graphically depicts these same data.

Table III-1. Judicial Review Council Budget FY 86 - FY 91.						
CATEGORY	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
<i>Requested</i>	\$25,000	\$33,000	\$35,600	\$40,900	\$38,400	\$41,000
<i>Appropriated</i>	\$21,200	\$22,000	\$23,000	\$20,000	\$19,400	\$33,070
<i>Expended</i>	\$11,979	\$22,001	\$27,088	\$31,045	\$30,752	\$61,498

Source: Governor's Budget FY 86-91 and Comptroller's Records

As Table III-1 illustrates, the council's appropriated budgets from FY 86 through FY 91 increased 56 percent while its expenditures quadrupled. This increase developed gradually over time. The council received an appropriation of \$21,200 in FY 86 but only expended \$11,979. In FY 87, the council's expenditures equaled its appropriation of \$22,000. However, since FY 87 the council has increasingly overspent its appropriation with a major expenditure increase in FY 90 and FY 91.

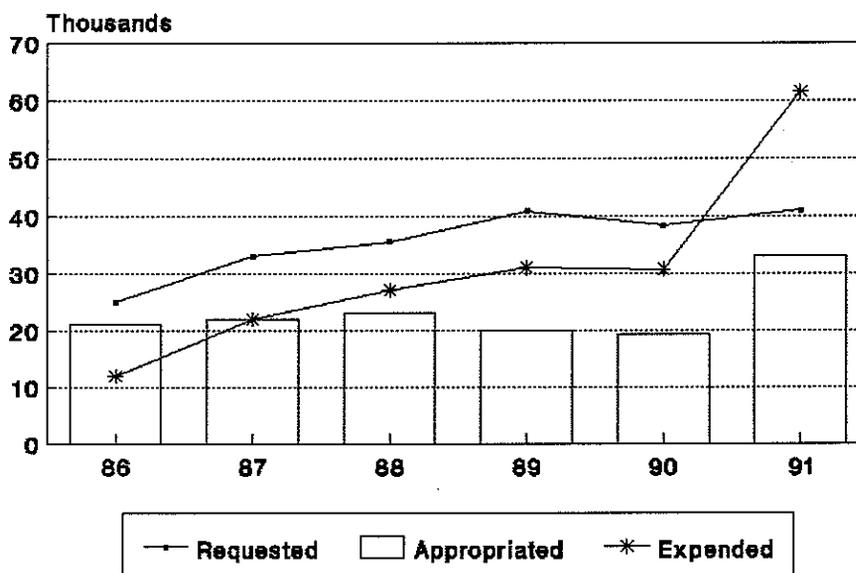
Expenditures

On a more or less monthly basis, the council prepares and submits an expenditure statement to the comptroller's office. The comptroller's office then reviews the statement and approves payment. To obtain a more detailed account of the council's expenditures, committee staff examined the expenditure statements filed with the comptroller's office from FY 88 through FY 91. Figures III-2 and III-3 on pages 19 and 20 illustrate the council's expenditures for the last four fiscal years.

In its analysis, the program review committee categorized the council's expenditures into five expense areas: operations, hotel, printer, subscription, and other. The operations expense

includes the cost of the council's professional staff and general administrative costs. As mentioned earlier, the executive director is the council's only professional staff. The executive director provides legal counsel and handles all of the council's administrative functions.

**Figure III-1. JRC Budget Trends
FY 86 to FY 91**



Source: Governor's Budget FYs 86-91

The second category is hotel expense. Since the council has no meeting facilities, hotel accommodations are also a part of the council's expenditures. The fourth category is primarily subscription fees to the American Judicature Society. The "other" category includes miscellaneous expenses such as payments for legal notice publications, reimbursements for council members, and court reporter services.

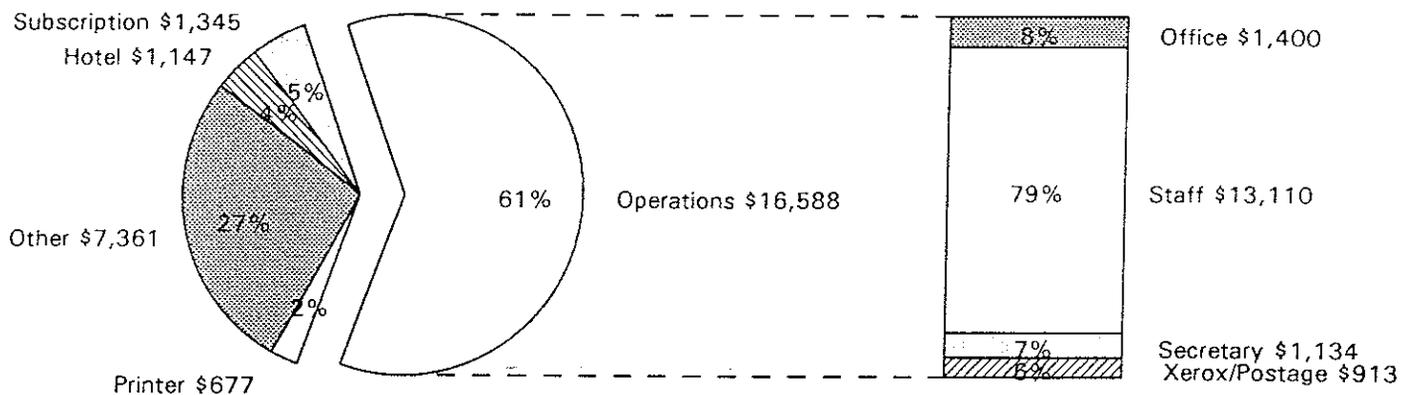
As Figures III-2 and III-3 show, the operations cost is consistently the council's largest expenditure for the last four fiscal years. Within the operations category, the biggest portion of the expense is the cost for professional staff. For the most part, the remaining categories stay relatively stable with the exception of the miscellaneous "other" category. The fluctuation in this area is due to the nature of the miscellaneous expenses. For example, in FY 88, other expenses included testimony from an expert witness and outside legal services. In FY 89, other

expenses included payment for council members to attend a conference and payment to court reporters. Finally, Table III- 2 provides a breakdown of council expenditures for each category for the past four fiscal years as well as the overall percentage change.

Table III-2. Judicial Review Council Expenditures for FYs 88-91.					
Expense	FY 88	FY 89	FY 90	FY 91	Total % Change
<i>Professional Staff</i>	\$13,110	\$17,367	\$19,823	\$37,904	189%
<i>Office</i>	1,400	2,688	2,342	2,100	50%
<i>Secretarial Services</i>	1,134	1,998	2,403	4,131	264%
<i>Xerox/Postage</i>	913	1,303	1,114	2,522	176%
<i>Hotel</i>	1,147	2,663	3,133	4,672	307%
<i>Printer</i>	677	-	629	6,700	890%
<i>Subscription</i>	1,345	1,525	1,307	1,334	-(1%)
<i>Other</i>	7,361	3,500	-	2,135	-(71%)
TOTAL	\$27,087	\$31,044	\$30,751	\$61,498	127%
Source: LPR&IC Staff Analysis of Comptroller's files.					

FIGURE III-2

JRC Expenditures FY 88



JRC Expenditures FY 89

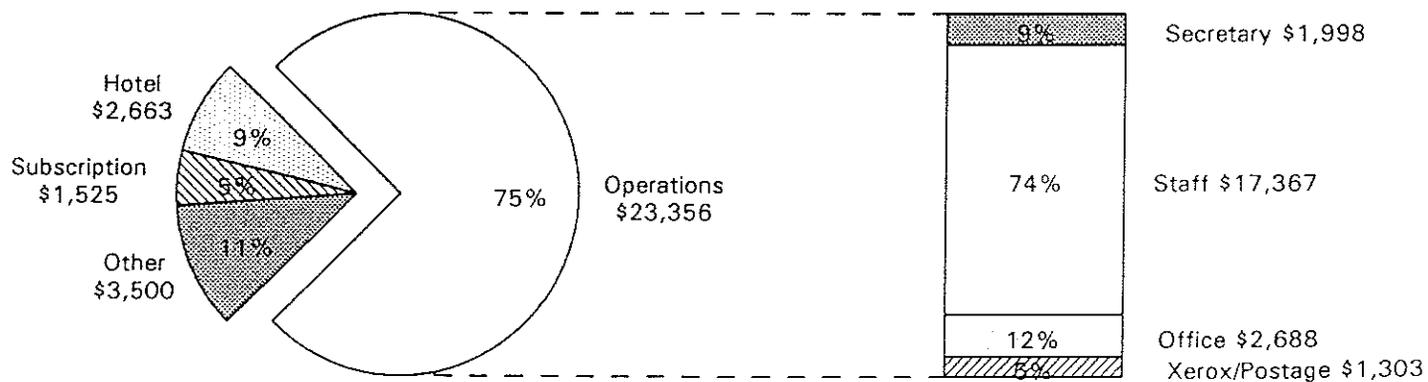
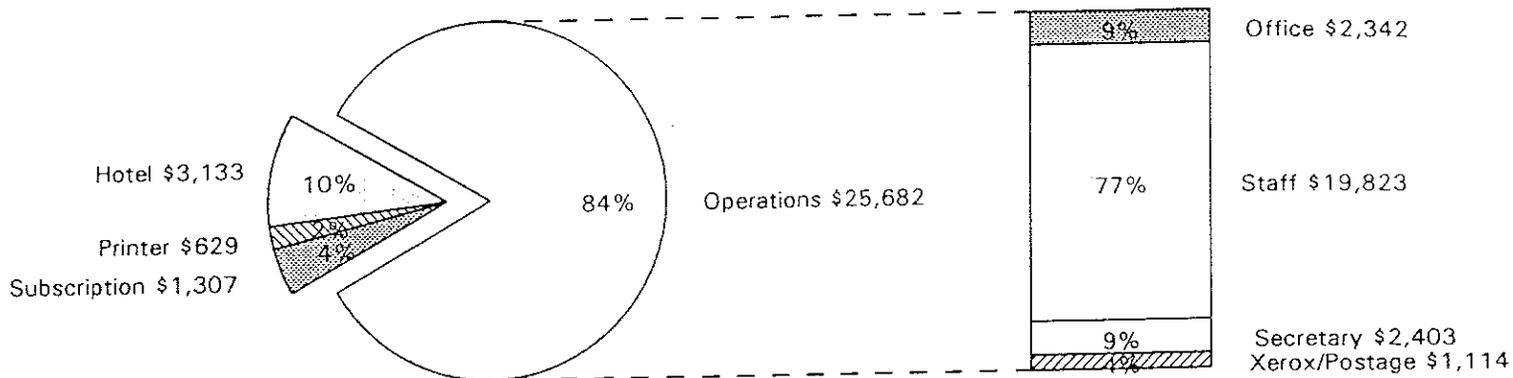
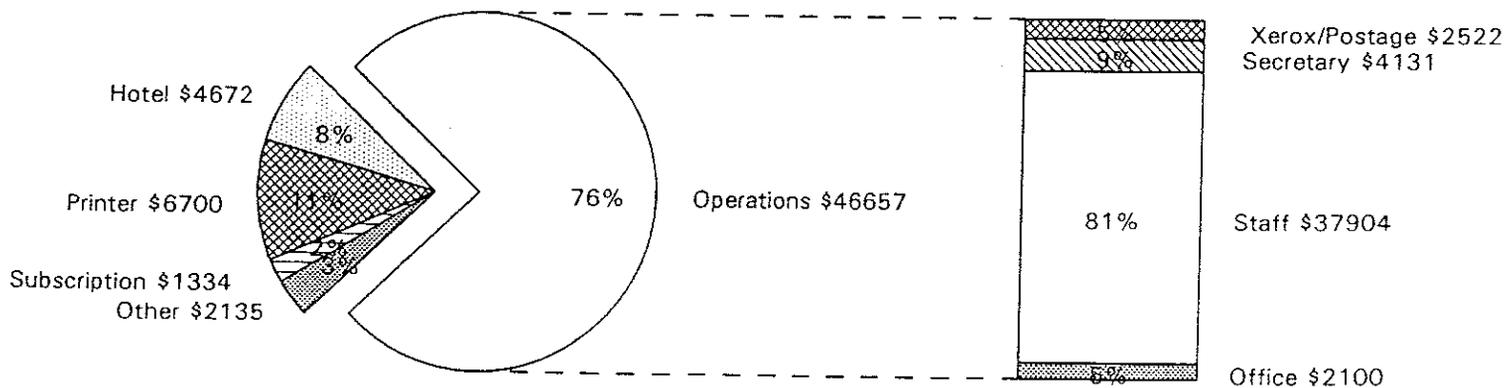


FIGURE III-3

JRC Expenditures FY 90



JRC Expenditures FY 91



CHAPTER IV

OTHER SOURCES OF JUDICIAL ACCOUNTABILITY

The Judicial Review Council has significant responsibilities geared to promoting the integrity of the judiciary. There are other sources of accountability, though, to which judges are subject.

Judicial Selection Process

The initial selection and reappointment processes for judges provides opportunities for accountability. After initial selection, judges serve eight-year terms and are subject to a review every eight years.

Initial judicial selection. Judges are originally appointed through nomination by the governor and confirmation by the legislature. Candidates are proposed by the Judicial Selection Commission. The selection commission, established in 1985, is a 12 member body, with 6 members appointed by the governor and 6 by legislative leaders.

The statutes require the commission to seek qualified candidates for nomination for appointment to the superior, appellate, and supreme courts. The criteria by which candidates are evaluated are set out in regulations adopted by the commission. The commission investigates and interviews individuals, and compiles a list of qualified candidates for the governor to consider. After the governor chooses his nominees, the judiciary committee holds hearings on each prospective judge, and the legislature then votes to confirm.

Reappointment. In the case of incumbent judges seeking reappointment to the same court, the commission evaluates these judges and forwards to the governor the names of the judges the commission recommends for reappointment. By statute, there is a presumption that each incumbent judge who seeks reappointment to the same court is qualified for retention, and the burden to rebut the presumption is on the commission.

The commission investigates and interviews these incumbent judges and recommends the judges for reappointment before their current terms expires unless recommendation is denied. If necessary, the commission holds a hearing concerning reappointment of a judge, to be open to the public if the judge requests. Again, upon nomination by the governor, the judiciary committee holds hearings on each judge.

The Judicial Review Council is required to submit recommendations for any judge nominated for a different court or any judge nominated for reappointment to the governor, the Judicial Selection Commission, and the judiciary committee. The council also must submit a report of any investigation of the judge by the council. By statute, the Judicial Selection Commission is not to consider any counsel investigation that resulted in a judge's exoneration.

As described in detail in Chapter II on the council process, because of the way the council operates, the council does not submit reports on all complaints received, only those that have been "substantially investigated".

According to the selection statutes, if the council "has reason to believe any such judge is guilty of [statutory misconduct], material neglect of duty or incompetence in the conduct of his office", it can refuse to recommend the judge for reappointment or nomination to a different court. If the council finds a judge has wilfully violated the financial gain statute or has been convicted of a felony or of a misdemeanor involving moral turpitude, the council cannot recommend a judge for nomination to be reappointed or moved to another court.

Supreme Court

The same constitutional amendment that authorized the establishment of the Judicial Review Council also provided that the Supreme Court could remove or suspend judges. The Supreme Court can take these actions based on a report of the Judicial Review Council or on its own motion.

The Supreme Court can investigate and hold hearings, under similar confidentiality provisions to the council. It will not investigate a complaint if the council has already done so.

The full Supreme Court decides whether to remove or suspend a judge from office. A judge can only be removed on the concurrent opinion of the members of the full court, and can only be suspended for any period of time with a majority vote of the court.

Admonishment by the Chief Court Administrator

Under statute, the chief court administrator has the same authority to issue admonishments as the Judicial Review Council. Thus, if the chief court administrator has "reason to believe that a judge has acted in a manner which gives the appearance of impropriety or constitutes an unfavorable judicial practice", he may "issue an admonishment ...recommending a change in [the] conduct or practice." The admonishment becomes part of the judge's performance evaluation record.

CHAPTER V

FINDINGS AND RECOMMENDATIONS

Introduction

This chapter sets out the findings and recommendations of the Legislative Program Review and Investigations Committee based on its study of the Judicial Review Council. Broadly stated, the question before the program review committee has been how the council is meeting its statutory purpose to "foster the dignity and integrity of the judiciary." The council is to achieve this goal primarily by investigating and adjudicating complaints of judicial misconduct.

In evaluating the achievements of the JRC, it is important to understand what the council is structured to do. Even if judicial misconduct impacts on the outcome of a court proceeding, there is no remedy available to the council to change or compensate for past action. The realm of the council's impact is the future -- on the future conduct of a particular judge cited in a complaint or on other judges, by example. Given this future orientation, the slant the council does or should take in its deliberations -- educative or punitive-- should be considered, as well as under what circumstances one slant is more appropriate than the other.

Beyond the framework within which the council works, a constant concern heard throughout the study was the low visibility of and lack of public information about the council. Acknowledging the value of maintaining confidentiality with respect to certain of its activities, the program review committee found the council by its low profile has created a perception that it is not interested in promoting public awareness of what the council does or how it does it. The committee also found the council lacked sufficient written procedures setting out its processes. The council's limited visibility and lack of comprehensive written procedures appear to be due to several factors, including operational tradition, resources, and absence of statutory requirements. Perceptions of how the council is performing its duties are colored by these issues.

The primary aim of the committee recommendations is to improve the visibility of the council and address issues related to perception. The first section of this chapter addresses findings and recommendations related to the area of visibility, public information, and communication. Subsequent sections address: council composition; confidentiality; council complaint process and standards; oversight; and disability hearings.

Visibility, Public Information, and Communication

Official location. As noted in Chapter II, the Judicial Review Council has never had an official administrative location. Although most administrative matters are handled by the executive director, there is no one central repository of all council records. Complaint files are

maintained at the executive director's private law office, while the administrative and substantive minutes of the council's meetings are maintained at the private business offices of the council member who is secretary. Copies of private admonishments issued by the council are kept at still another council member's private offices. In addition, each member has his or her own files.

Since its inception, the council has held meetings and hearings in various motel conference rooms. According to the council, this is done primarily to enhance the confidentiality of its process. On average, the council meets once a month to consider new complaints received, hold hearings, and make decisions on pending business.

The program review committee finds that the fact the council does not have a publicized, permanent administrative location presents several problems. First, any office charged with the adjudication of public complaints should have an official location to which members of the public may go to find out how to address their concerns. Second, any state entity should have a central location for all its records. Although the scattered records may reflect operational decisions as well as the lack of a permanent office, a permanent office should promote more comprehensive recordkeeping. Third, it may impede or dissuade complainants from filing complaints. Finally, it sends an inappropriate message that the state does not view the purpose or function of the council as important, serious, or a priority.

Therefore, the program review committee recommends the Judicial Review Council establish an administrative office, open during regular business hours, within an existing, centrally located state facility. The council should also be able to hold meetings and hearings at the same location.

It is imperative that the public believe that the state supports the judicial conduct review process just as it does other conduct review boards, such as the State Ethics Commission. Providing the council with a permanent location should promote public trust as well as provide a central location for handling administrative matters.

External communication. As noted previously, the council is not well-publicized. As a result, the Judicial Review Council presence and function is not widely known. A survey of attorneys conducted by program review staff suggests that even many attorneys are not fully aware of the judicial conduct review process.⁵ Of the 537 attorneys who responded to the survey, 54 percent indicated that they had little or no knowledge of the council. This sense of lack of information is also supported by testimony at program review committee hearings.

The council's failure to provide an official address or phone number can undermine the public's confidence in the judicial review process and may be viewed as discouraging access. Publicizing the existence of the council would promote accessibility and visibility of the council

⁵ Appendices E and F contain the attorney and judge survey results respectively.

and its actions. Acknowledging that the council has had no statutory requirement to educate the public, it has made very limited efforts to do so.

The program review committee recommends that the Judicial Review Council develop ways to inform and educate the public, judges, and lawyers about the council, including, at a minimum:

- **publishing its name, address, and phone number in the state government directory and local telephone directories under an easily accessible and logical heading;**
- **developing and distributing a plain language brochure that can assist the public in understanding the operation of the council and the issues that come before it. The brochure should be made available in all court administrative offices as well as provided when an inquiry is received by the council; and**
- **speaking before groups.**

Several states have published a plain language brochure that covers, in question and answer format, a number of questions that members of the public often ask.

Annual report. Although the Judicial Review Council has no statutory requirement to issue activity reports, it has issued three such reports since 1978. The reports provide background information on the council, including operating procedures and statistics summarizing council activities. However, these reports are not prepared at regular intervals and do not provide any comprehensive explanation of the work done by the council. Currently, reports are distributed to the governor's office, the judiciary committee, all judges, and every public library in the state.

The program review committee finds that periodic reports provide the council an opportunity to educate the public about its authority and activities. **Thus, the committee recommends that the Judicial Review Council prepare an annual activity report summarizing the council's actions for the previous fiscal year, to be submitted on September 1 to the governor, the judicial department, the committee of cognizance, and the judges of the superior court. This report should include:**

- **the number of complaints received by subject matter and source of complaint;**
- **a breakdown of complaint dispositions, including the reasons for dismissal, at points in the process; and**

- **a summary of the conduct for which admonishments were given (with no individuals identified), along with an explanation as to why no probable cause was found.**

The publication of an annual report should provide additional visibility and public accountability. Also, by providing examples of what types of conduct reach a sanctionable or admonishable level, the annual report would act as an educational tool for judges as well as the public.

Communication with complainants. Currently, the council routinely acknowledges communications and correspondence. Usually, the council, through its executive director, sends a letter to a complainant stating the complaint has been received and will be reviewed by the council. The letter may describe the council's jurisdiction and tell the complainant that he or she will be notified of final action.

Once a complaint has been reviewed by the council, the executive director sends a letter to the complainant informing him or her of the complaint disposition. Committee staff had the opportunity to examine a few notification letters and found the council does not provide much explanation of how or why the complaint was resolved in a particular way. For the most part, notification letters are a few sentences long with short explanations of council action. Two samples of notification letters are provided in Appendix G.

In the first sample letter, the complainant is notified that "the Judicial Review Council does not have any jurisdiction over small claims magistrates." The letter, however, does not explain what type of jurisdiction the council does have. The second notification letter states: "[T]he council has determined that you [complainant] did not allege any factual allegations to warrant a probable cause hearing." The letter does not explain whether the council was unable to substantiate the facts or the allegations had no factual basis. **The program review committee recommends that the Judicial Review Council provide more explanation to complainants and judges regarding the status and outcomes of their complaints.**

Written policies and procedures. The council has developed Rules of Procedure, which set out some procedures related to the mechanics of the investigation process. There are many areas for which the council should develop and publish policies and procedures. For example, there are no written criteria for what constitutes a conflict of interest for a council member on any given case, and no written procedures for letting either a complainant or a judge know that a council member has recused him or herself from a case.

The program review committee recommends that the council develop and publish comprehensive written policies and procedures that shall include, but not be limited to:

- **an explanation of the role of the complainant in an investigation and adjudication of a complaint;**

- **standards for identifying and addressing conflicts of interest for council members;**
- **use of previous complaints;**
- **standards used in probable cause determinations (e.g., weight given to "deminimus" versus "serious" violations, isolated versus pattern of conduct);**
- **standards used to isolate valid conduct complaints in cases where there are appealable issues beyond the scope of the council; and**
- **criteria for when a substantial investigation is requested.**

Complaint form. The Judicial Review Council uses a one-page form to take in complaints. The form instructs the individual to state the nature of the complaint and requires the complainant be sworn to before a notary public. The complainant must then mail the form to the council's post office box address. After a complaint form has been received by the executive director, it goes before the Judicial Review Council at its next meeting.

The program review committee finds that the existing complaint form does not furnish the complainant with enough information about the judicial review process. For example, the form does not mention any timeframes such as the statute of limitations.

The committee recommends the Judicial Review Council revise its complaint form to include an official administrative address and telephone number and information on the council process in plain language. The form instructions should also be in plain language. The revised form should also contain statutory timeframes.

In addition, the council should ensure that each complainant is provided with the council's plain language brochure and written rules of procedure explaining the council's purpose, authority, jurisdiction, and process.

Forms are supposed to be available to the public through the offices of court clerks or from the executive director. The ease with which these forms may be obtained reflects in part the council's accessibility to the public. To determine whether the council complaint forms are readily available to the public, program review staff, through a telephone survey, contacted all judicial district and geographical area court clerk offices. Personnel in each office were asked where a person could file a complaint about a judge.

Table V-1 contains the survey results, and shows that personnel from only 16 out of a possible 34 courthouses indicated they had the correct forms, with 12 offering the correct form on the first response. Staff at the remaining four courthouses initially offered the Statewide Grievance form for attorneys and after double-checking offered the judicial review complaint form.

Personnel at 15 courthouses responded they didn't know or weren't sure where complaints against judges could be filed but referred program review staff to another courthouse in a larger jurisdiction or suggested a phone call to the chief court administrator. Two court staff offered the statewide grievance form for attorneys; when program review staff questioned whether these forms could be used for complaints against judges, the clerks responded yes. One court worker stated that grievances could only be filed against attorneys, and not judges.

TABLE V-1. Telephone Poll of Courthouse Clerk Offices.		
Response:	G.A.	J.D.
<i>On first response had the correct form.</i>	3	9
<i>First offered Statewide Grievance form; after checking offered the correct form.</i>	2	2
<i>Don't Know/ Not Sure; referred elsewhere.</i>	13	2
<i>Statewide Grievance forms for attorneys is the same for judges.</i>	2	-
<i>Grievances filed only for attorneys not judges.</i>	-	1
TOTAL	20	14
G.A. - Geographical Area J.D. - Judicial District		

Council staff. Under current law, there is no provision for the Judicial Review Council to employ its own staff. Rather, as mentioned in Chapter I, the council may use personnel from other state agencies to conduct its investigations. As a result, the council has never had full-time personnel. Since 1978, the council has contracted with a private attorney to serve as the council's executive director and legal counsel. Employees of the executive director's private law firm provide the council administrative support services. At various times, clerical work is done in the offices of the various council members, for which they may or may not request reimbursement.

To conduct its investigations, the council uses inspectors from the various state's attorneys offices with one inspector, in particular, doing the majority of the council's work. The state's attorney's offices are not reimbursed for the time their inspectors spend on council investigations.

Based on the earlier recommendation requiring the establishment of an administrative office, personnel will be needed to staff that office. In addition, other committee recommendations will increase the work of the council, and resources will be needed to accomplish these duties. Adequate resources must be available to the council to accept and process complaints

promptly and completely. Legal counsel is necessary to assess, prepare, and present the complaint proceedings to the council.

The committee believes it is important that the council staff be independent. An independent staff would help eliminate any appearance of a conflict of interest resulting from the part-time use of active legal professionals. Public perception that the state has placed the purpose of the Judicial Review Council as a priority would also be enhanced.

Thus, the program review committee recommends that the Judicial Review Council be statutorily empowered to maintain its own staff. The council should hire a full-time executive director and an administrative assistant to staff the new administrative office. The council staff would be responsible for carrying out the council's directions and policies. In addition, the executive director should be statutorily empowered to investigate complaints and present evidence gathered as a result of council investigations. Furthermore, the executive director should be responsible for hiring and/or contracting with investigators to conduct investigations as necessary.

The program review committee considered the feasibility of continuing the practice of contracting for legal services as needed. Although at first glance this practice may seem cost-effective, it may, in fact be more expensive. For example, in FY 91, the council expended approximately \$37,904 on the part-time contractual services of the executive director. This contract is based on an hourly rate of \$175. Based on the premise that increasing the council's visibility could generate more investigations and the council will be required to do additional work, it is conceivable that the cost of contracting for legal services might in fact surpass the expense of hiring a full-time executive director.

Judiciary committee access to council files. Currently, the council is required to provide certain reports on judges up for renomination to the judiciary committee. The practice of the council has been to only provide information to the judiciary committee about complaints where substantial investigations have been ordered by the council; a judge is not made aware of any complaint received and dismissed prior to this stage. The committee believes more information should be made available to the judiciary committee for judicial renominations purposes.

The program review committee recommends that the Judicial Review Council shall report on the number of complaints and the disposition of those complaints to the judiciary committee regarding any judge up for renomination or nomination to a new court, and make available to the judiciary committee all complaint files concerning a particular judge when he or she comes up for renomination or nomination to another court.

Composition and Related Issues

Currently, the statutory composition of Connecticut's Judicial Review Council is as follows:

- three superior court judges elected by members of the superior court (these judges cannot be members of the supreme court);
- three attorneys admitted to practice in the state appointed by the governor with the approval of the general assembly; and
- five persons who are not attorneys or judges appointed by the governor and approved by the general assembly.

Council members serve staggered terms of six years with no prohibition on successive terms. To date, four council members have been on the council since its inception in 1978.

Although it is important to have council members who are knowledgeable about the court system, the program review committee finds that the fact the majority of judicial review council members are active legal professionals may project a perception of biased representation. Arguably, active legal professionals may have difficulty in reviewing or criticizing their colleagues. In particular, trial litigators may have a problem in censuring judges with whom they may interact.

In addition, the program review committee finds that the practice of judges electing their own reviewers may not project an image of an impartial judicial review organization. Thus, **the program review committee recommends the statutory composition of the council shall be changed to the following:**

- **two superior court judges, appointed by the chief justice with the approval of the legislature, who shall be non-voting members;**
- **two attorneys admitted to practice in the state, appointed by the governor with the approval of the general assembly, only one of whom may be an active trial attorney, who shall be non-voting members;**
- **five persons who are not attorneys or judges, appointed as follows; one by the governor; one by the senate president pro tempore; one by the senate minority leader; one by the speaker of the house; and one by the house minority leader;**
- **members shall serve for four year terms, limited to one term, with membership terms staggered on odd years;**
- **the terms of all current Judicial Review Council members shall terminate December 31, 1992. Beginning on January 1, 1993, the composition structure as set out above shall be effective, with terms commencing January 1, 1993. Any person serving on the council on**

or before January 1, 1991, shall be considered to have served one term, and is not eligible for reappointment; and

- **the governor shall appoint the chairman from among the lay members.**

The changes recommended by the committee are intended to promote the impartial nature of the council through a majority of lay members while providing for expertise and experience in the judicial world. The program review committee examined the composition of judicial conduct organizations in other states and found that the majority representation varies from state to state. Typically, other judicial review organizations have seven to nine members with some combination of judges, attorneys, and public members. Only one state, Hawaii, does not include judges on its commission. However, Hawaii council members are appointed by the state's supreme court.

Generally, judges serving on judicial conduct commissions are appointed by the supreme court or selected by various judges' groups. However, variations in the selection process do exist. For example, in a few states the whole council is appointed by the supreme court or governor.

With respect to establishing the judicial and lawyer members as non-voting, the committee believed this was a measure that provides the council with the benefit and expertise of those persons, but blunted concerns about perceived partiality.

In regard to terms of office, other states' membership terms are four to six years, although a few states mandate a three year term. To preserve continuity, most states provide for overlapping or staggered membership terms. Twenty-eight states limit or prohibit successive terms.

Confidentiality

General confidentiality rule. The current statutes provide that council proceedings prior to a probable cause finding should be confidential unless waived by the judge who is the subject of a complaint. The program review committee believes this policy should continue. However, the committee believes that the statute should be amended to clarify that the provision only applies to information obtained through council proceedings, and not apply to any information any person has independent of council activities. The major example of what the confidentiality rule should not do is attempt to prohibit the complainant from discussing his or her complaint.

The program review committee recommends the statutes be amended to clarify that the confidentiality provisions do not apply to information known independent of council investigations.

Rule after probable cause finding. Once probable cause is found, under current law, the record of the subsequent proceedings, but nothing prior, is open. However, the rationale of shielding totally baseless complaints is removed once probable cause is found. In the opinion of the committee, the whole record should be open in such cases.

The program review committee recommends the statutes be amended to provide for disclosure of the entire record of a complaint for which probable cause has been found.

Private admonishments. The issue of private admonishment was reviewed during the study. A major problem with keeping admonishments private is that what a complainant finally hears from the council at the conclusion of the council's work is that no probable cause has been found. Thus, a person who witnessed or otherwise experienced conduct the council found raised the appearance of impropriety or constituted unfavorable judicial conduct is left with the impression that the judge in question experienced no consequences.

Many states have wrestled with this problem of balancing the benefits of a private resolution with letting a complainant know that some action had been taken with a variety of results. Some states have developed letters by which they hint that some action may have been taken without actually saying so to the complainant.

The program review committee recommends the council inform the complainant that an admonishment was given to the judge, and explain what an admonishment means, including that it is not a finding of misconduct, without discussing the substance of the admonishment.

To increase the educational benefit of the admonishments, the committee recommended earlier that summaries of the conduct prompting admonishments be included in the council's annual report, with no identifying information about any particular judge.

Complaint Process and Standards

The council's complaint investigation and adjudication process was described in Chapter II. The committee had anticipated being able to get a first-hand look at how the process was actually carried out through a file review. Because of the problems encountered gaining access to the council files, the committee staff ultimately only saw a very limited number of files. This severely restricted the committee's ability to assess what the council really does and the consistency with which the council applies its judgments. Nonetheless, the committee was able to make recommendations in certain areas related to the complaint process.

Council-initiated complaints. The council now, at its discretion, may initiate complaints. It must investigate written complaints it receives. There are many reasons why someone might witness misconduct and not file a complaint. An individual may be uncomfortable about a judge's actions, but not aware that misconduct occurred. Also, many attorneys responding to

the program review survey made it clear they would not file a complaint with the council if they witnessed misconduct for fear of future repercussions.

Given the potential harm that can come from judicial misconduct in terms of people's perception of the quality of the system, it is important that the conduct review system not rely solely on external, formal complaints.

The program review committee recommends that the council be required to initiate an investigation whenever the council has reason to believe that a judge has engaged in conduct in violation of C.G.S. Sec. 51-51i.

Investigations. At present, when the council orders an investigation, the executive director obtains the services of an investigator. After the investigation, the inspector prepares a report for the council. Program review staff saw two such investigative reports prepared for the council by an inspector from a state's attorney's office. In both cases, demeanor was the root of the complaints, and in both cases, no probable cause was found; however, private admonishments were given.

There was no evidence in the documentation made available to program review staff that anything was done during the investigations to determine if the conduct complained about may have been part of a pattern of behavior. As that might make a material difference in the outcome of a case, it should be considered by the council.

As an example of a practice of another judicial conduct review organization, the New York Commission on Judicial Conduct investigators, after receipt of a complaint related to a judge's demeanor, will investigate the judge's activities contemporaneous to the case from which the complaint originated. Attorneys and litigants in other cases will be interviewed, for example. The New York investigators will also actually visit the judge's courtroom a number of times to see first-hand if there is any evidence of conduct similar to the original complaint.

The program review committee recommends council investigations include steps to determine if the complaint might evidence a pattern of misconduct and that these steps be recorded in the case record.

This kind of investigation is more-resource intensive than just focusing on the situation originating the complaint. However, if complaints are treated in isolation, patterns of conduct that would be considered misconduct, and harmful to the judiciary, would not be discovered and addressed.

The committee further recommends the council establish in its written policies and procedures that when a complaint is filed, the council will review its records for previous complaints about the same judge, and take the previous complaints into consideration in accordance with criteria it will develop and publish.

Probable cause determinations. Another area of concern is what the council actually does in its probable cause determinations. The standard of probable cause is a long-used standard in law. It means the presence of facts and circumstances that would lead a reasonable person to reasonably believe something probably happened, for example, judicial misconduct.

The program review committee recommends that the council articulate and publish a plain language definition of probable cause in its policies and procedures.

A probable cause determination addresses two major questions: 1) is there reason to believe the conduct complained about actually occurred; and 2) if the conduct did occur, is there reason to believe the conduct was misconduct under the statutory descriptions. The second question may involve some interpretation by the council. The language of some of the misconduct grounds now include words that would require more than one incident to meet the statutory description, for example, "wilful and **persistent** (emphasis added) failure to perform his duty". For other grounds that do not contain such qualifying language, the council may be interpreting the grounds to include implied elements, for example, distinguishing between isolated incidents and multiple incidents, or minor and serious violations.

Currently, no one knows the interpretations the council is using. This could in part be the source of questions raised during the program review study about whether the council applies the probable cause standard appropriately.

During the program review study, staff had limited access to council files. However, in one case reviewed, it was unclear why probable cause was not found (the council issued a admonishment). In that case, there was no dispute about what conduct had occurred; the issue was whether that conduct was misconduct.

On a plain reading of the judicial code of conduct section involved, it seemed the conduct described reasonably fit the language of the section as a threshold matter. As there was no explanation in the case file or the minutes as to the basis of the finding, the rationale for the council's decision was indeterminable. Whatever mitigating factors there might have been in the case -- that it was an isolated incident or that it was considered a deminimus action -- would clearly be appropriate in considering the merits of the actual case. If, in fact, the council has interpreted certain of the canons to implicitly include criteria distinguishing between serious and non-serious conduct, or isolated and patterned behavior, those interpretations should be made clear in the council's decisions.

The program review committee recommends that in every case for which a substantial investigation is conducted and the case is dismissed with no finding of probable cause, a written decision of the case shall be produced. The written decision shall summarize the case and the evidence presented and articulate the specific factual and legal bases upon which the finding was made. In cases where an admonishment is given, the decision shall state the specific factual and legal bases upon which the council reasoned an admonishment was called for. All decisions shall be signed by the concurring members

including the concurring non-voting members. Any dissenting opinions shall be written and signed by the dissenting members including non-voting dissenting members.

Further, the decisions shall be indexed and compiled.

Another major benefit of this recommendation will be the development of a consistent body of council case law to refer to and for new council members to study. Now, there appears to be a reliance on the institutional memory of certain council members and the executive director, who have been with the council from the start. Given the seriousness of the council function, a formal written record is more appropriate.

Oversight

Public confidence in the judicial conduct review process must be maintained. Valid confidentiality provisions can cast shadows on this confidence, with little recourse. Because of the critical importance of this confidence, the program review committee believes it important to have a mechanism for independent oversight.

The program review committee shall evaluate the council's performance of its duties and make recommendations to the General Assembly by January 1, 1996, for continuation, modification, or termination of the council. In its evaluation of the council, the program review committee shall have full access to all council records, with no information deleted. The committee and its staff shall maintain the confidentiality of the records in the same manner required of the council. In case of termination, the council shall continue in existence for one year for the purpose of concluding its affairs.

Disability Hearings

In addition to handling misconduct investigations, the Judicial Review Council also has jurisdiction over general disability retirement applications for judges, based either on a judge's motion or that of the council. During the study, the committee found that a concern exists regarding the status of disability applications if the council has not acted upon the claim before the applicant's term has expired. To address this concern, **the program review committee recommends that the statutes should be amended to prevent a judge from being denied a disability retirement because his or her judicial term expired during the pendency of an application.**

Another Judicial Review Council responsibility is to investigate any matter referred to it by the chief court administrator concerning judges who may have mental infirmities, mental illnesses, or drug or alcohol addictions. During the course of its investigation, the council may request medical records from the judge, and if the judge refuses, the council may request that the judge submit to an independent medical examination. Currently, the confidentiality provisions for these investigations are the same as with misconduct complaints. **Due to the**

nature of the personal medical history that may be involved in these hearings, the program review committee recommends that the Judicial Review Council hearings on disability be confidential and not open to the public.

APPENDICES

APPENDIX A

Legislative History of the Judicial Review Council

Prior to the creation of the present Judicial Review Council, judicial accountability was maintained through impeachment or removal by the Governor upon two thirds vote of each house of the General Assembly. However, critics of this process charged that it only covered rare or extreme violations because there had never been an impeachment or removal by the governor.

In 1969, the legislature established a seven-member council composed of judges and members of the public that could recommend reappointment and impeachment of judges. The council could investigate complaints against any non-elected judge and report to the Governor and the Judiciary Committee the results of its investigations, and if necessary, recommend to the House of Representatives the institution of impeachment proceedings. The council could not, however, censure or suspend judges.

In 1976, an amendment to Connecticut's constitution provided two new methods for disciplining judges - one in the Supreme Court and one in a recreated, stronger Judicial Review Council, if authorized by the legislature. The amendment provided:

In addition to removal by impeachment and removal by the governor on the address of two-thirds of each house of the general assembly, judges of all courts except those courts to which judges are elected, may in such manner as shall by law be prescribed, be removed or suspended by the supreme court. The General Assembly may establish a Judicial Review Council which may also in such manner as shall by law be prescribed, censure any such judge or suspend any such judge for a definite period not longer than one year.

Thus, the Supreme Court was given the power to suspend or remove judges and the council to censure them and suspend for up to a year.

In 1977, the General Assembly acted to carry out the constitutional amendment. Through Public Act 77-494, the legislature repealed all sections of the statutes dealing with the former Judicial Review Council and re-established the council with similar duties composed of nine members including three judges, three attorneys, and three citizens.

The terms of the council members were set at six years, as they are now, although initially provisions were made for shorter terms to staggered the membership. Members of the new council, like its predecessor, received no compensation but were entitled to reimbursement for any necessary expenses. The council was also authorized to receive funds from private sources and the federal government.

Under the 1977 Act, the council was to screen every written complaint and "make such further investigations as the facts of the situation warranted." The council was statutorily authorized to investigate all complaints it received concerning the misconduct of a judge. In conducting its investigation, the council was given the same powers as the supreme court to subpoena witnesses, hold witnesses in contempt, compel production of documents, and use the services of any state agency.

Any council hearing was private unless the judge under investigation requested otherwise. A judge appearing at a council hearing had basic due process rights.

Under the terms of P.A. 77-494, seven reasons provided grounds for the removal, suspension, or censure of a judge:

- 1) conduct prejudicial to the impartial and effective administration of justice;
- 2) a wilful violation of the canons of judicial ethics;
- 3) wilful and persistent failure to perform his duty;
- 4) neglectful or incompetent performance of duties;
- 5) habitual abuse of alcohol or drugs to such an extent as to render him unfit for his duties;
- 6) final conviction of a felony or misdemeanor involving moral turpitude;
or
- 7) disbarment or suspension as an attorney.

At the end of an investigation the council could take the following actions: 1) privately censure; 2) publicly censure; 3) suspend for a definite term not longer than one year; 4) refer to the Supreme Court with a recommendation of suspension for longer than one year; 5) refer to the Supreme Court with a recommendation of removal from office; or 6) exonerate. A judge could appeal the council's decision to the Supreme Court.

Up until 1982, there was no provision for public proceedings absent a subject judge's request. In 1982, the legislature established a preliminary investigation process within which a private probable cause hearing was to be held. However, if probable cause was found, the council was to hold an open hearing.

Public Act 82-338 also established time deadlines and notification requirements to be followed in any investigation. It also required the council to investigate every complaint, rather than just screen them. Furthermore, the legislature deleted private censure as an alternative for

the council and added admonishment for cases where judicial behavior fell short of misconduct. The act also added the current language prohibiting witness disclosure of any investigation.

In 1986, the legislature made further statutory changes regarding the council. Among these changes was an increase in the number of lay people on the council from three to five. The council was also required to investigate reports submitted by the chief court administrator concerning a judge's performance due to mental infirmity, mental illness, or drug or alcohol addiction. In addition, the council was required to submit an investigation report of any judge up for reappointment to the Governor and the Judiciary Committee.

The legislature also removed the statutory language stipulating the use of drugs or alcohol as grounds for censure, suspension, or removal. In its place, the legislature added "temperament which adversely affects the orderly carriage of justice." The council was also authorized to initiate an investigation if it has reason to believe a judge has conducted himself improperly.

Finally, a statutory change was made removing admonishment was one of the alternatives available to the council at the conclusion of an investigation. Admonishment was still allowed if the council has found no actual misconduct but rather the appearance of impropriety or an unfavorable practice.

APPENDIX B

Information on Connecticut Judges and the Judicial System

Numbers of Judges. As of September 1, 1990, there were 150 authorized judge positions in the Superior Court, the state's trial court. The trial court is organized as follows: 12 Judicial District Courts, which handle the most serious cases, 22 Geographical Area Courts, which handle relatively less serious cases, and 14 Juvenile Districts. The superior court has five trial divisions: Criminal, civil, family, juvenile and housing. In addition to the 150 trial court judges, the appellate court has nine judges, and the Supreme Court seven. In addition, there are 39 state trial referees and 7 senior judges.

Judicial system statistics. The following cases were disposed of during FY 90:

- 169,835 criminal cases;
- 56,084 civil cases
- 24,355 family cases; and
- 20,306 housing cases.

In the Judicial Department's most recent biennial report, it was noted that the superior court caseload had increased 7.3 percent over its earlier report. The report also commented:

The state's Superior Court judges are searching aggressively for ways to address the escalating caseload. Their efforts are, however, hampered by a drastic increase in nondispositional matters before the court. Judges face an ever-increasing number of restraining orders and prejudgment hearing remedies and are devoting substantially more time to reviewing alternative sentencing options. These matters require considerable judicial attention, even though they are not reflected in disposition statistics.

Salaries. As of July 1, 1991, the current salaries of judges are:

Superior Court Judges	\$85,848
Appellate Court Judges	\$89,866
Chief Judge of Appellate Court	\$95,414
Associate Judges of Supreme Court	\$96,647
Chief Justice of Supreme Court	\$105,652
(Administrative Judges receive an additional \$1000)	

APPENDIX C

Judicial Code of Conduct

CODE OF JUDICIAL CONDUCT *

Adopted Effective October 1, 1974

Including Amendments Received Through
October 1, 1991

Table of Canons

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities.
3. A Judge Should Perform the Duties of His Office Impartially and Diligently.
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. A Judge Should Regulate His Extrajudicial Activities to Minimize the Risk of Conflict With His Judicial Duties.
6. A Judge Should Regularly File Reports of Compensation Received for Quasi-judicial and Extrajudicial Activities.
7. A Judge Should Refrain From Political Activity Inappropriate to His Judicial Office.

Compliance With the Code of Judicial Conduct.

Effective Date of Compliance.

* This Code of Judicial Conduct was adopted by the judges of the Superior Court effective October 1, 1974. The Canons and accompanying commentaries are those adopted by the House of Delegates of the American Bar Association on August 16, 1972, as adapted to conform with Connecticut judicial procedures.

CANON 1

A Judge Should Uphold the Integrity and Independence
of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance
of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

CANON 3

A Judge Should Perform the Duties of His Office
Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite him to file a brief amicus curiae.

(5) A judge should dispose promptly of the business of the court.

Commentary

Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by the Code of Professional Responsibility.

(7) Except as otherwise provided by this canon, a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions. A judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(7A)(1) The broadcasting, televising, recording or photographing of court proceedings by news media will be allowed, subject to the limitations hereinafter set forth, in civil and criminal trials in the superior court.

(2) A judge may permit broadcasting, televising, recording or photographing of civil and criminal trials in courtrooms of the superior court except as hereinafter excluded. As used in these rules, the word "trial" in jury cases shall mean proceedings taking place after the jury has been sworn and in non-jury proceedings commencing with the swearing in of the first witness.

(3) Any media or pool representative seeking permission to broadcast, televise, record or photograph a civil or criminal trial shall, at least three days prior to the commencement of the trial, submit a written request to the administrative judge of the judicial district where the case is to be tried. A request submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The administrative judge shall refer the request to the trial judge who shall approve or disapprove such request. Disapproval by the trial judge shall be final. Before the trial judge approves of such request he shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair trial, but the right to limit coverage at any time in the interests of the administration of justice shall be reserved to

such judge. Approval of the request, however, shall not be effective unless confirmed by the administrative judge. Any news organization seeking permission to participate in a pool whose name was not submitted with the original request may, at any time, submit a separate written request to the administrative judge and shall be allowed to participate in the pool arrangement only with the approval of the trial judge.

(4) No broadcasting, televising, recording or photographing of any of the following proceedings shall be permitted:

1. Family relations matters as defined in the General Statutes § 46b-1;
2. Sentencing hearings, except in trials which have been previously broadcast, televised, recorded or photographed;
3. Trials involving trade secrets;
4. In jury trials, all proceedings held in the absence of the jury;
5. Trials of sexual offense charges;
6. Trials of cases which must be closed to the public to comply with the provisions of state law.

(5) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess in the trial.

(6) No broadcasting or recording of conferences involving counsel and the trial judge at the bench or involving counsel and their clients shall be permitted.

(7) No juror shall be the subject of any coverage permitted under these rules. However, in courtrooms where televising or photographing is impossible without including the jury as part of the unavoidable background, the televising or photographing is permitted, but closeups which clearly identify individual jurors are prohibited.

(8) The trial judge in his discretion, upon his own motion, may prohibit the broadcasting, televising, recording or photographing of any participant at the trial. He may also, at the request of a participant, prohibit in his discretion the broadcasting, televising, recording or photographing of that participant at the trial. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice, such as for the victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. Participant for the purpose of this rule shall mean any party, lawyer or witness.

(9)(a) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the court-

room. The television camera and operator shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress, the television camera operator shall operate the television camera in this designated location only. Videotape recording equipment and other equipment which is not a component part of the television camera shall be located outside the courtroom.

(b) Only one still camera photographer, carrying not more than two still cameras with one lens for each camera, shall be permitted in the courtroom. The still camera photographer shall be positioned in such location in the courtroom as shall be designated by the trial judge. While the trial is in progress the still camera photographer shall photograph court proceedings from this designated location only.

(c) Only one audio system for televising, broadcasting and recording purposes shall be permitted in the courtroom. Audio pickup for such purposes shall be accomplished from the existing audio system in the court facility. If there is no technically suitable audio system in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the trial judge.

(10) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses shall not be changed within the courtroom except during a recess or other appropriate time in the trial.

(11) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the trial. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the trial judge and other appropriate authority.

(12) Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the court to mediate any dispute as to the appropriate media representative or equipment for a particular trial. If any such medium shall not agree on equipment, procedures and personnel, the court shall not permit that medium to have coverage at the trial.

(13) Except as provided by these rules, established restrictions upon broadcasting, televising, recording and photographing in areas adjacent to the courtrooms shall remain in full force.

(14) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(15) To evaluate prospective problems where approval for broadcasting, televising, recording or photographing of a trial has been granted, and to ensure compliance with these rules during the trial, a mandatory pretrial conference shall be held by the trial judge, attorneys and media personnel. At such conference the trial judge shall review these rules and set forth the conditions of coverage in accordance therewith.

(B)(1) The broadcasting, televising, recording or photographing of court proceedings by news media in the courtroom of the appellate court will be allowed, subject to the limitations set forth herein.

(2) Any member of the news media seeking permission to broadcast, televise, record or photograph a court proceeding appearing on a printed docket of the appellate court, excluding any hearing on a motion, shall, not later than the Wednesday which is thirteen days before the term for which such printed docket is prepared, file a written request with the chief clerk of the appellate court and at the same time shall send by certified mail a copy of such written request to each counsel or pro se party of record. Endorsed on the request filed with the chief clerk of the appellate court shall be a certification of such mailing. If any counsel or pro se party of record wishes to be excluded from any broadcasting, televising, recording or photographing in a court proceeding appearing on a printed docket of the appellate court, excluding any hearing on a motion, he shall file a written request with the chief clerk of the appellate court not later than the Wednesday which is six days before the term for which such printed docket is prepared. The request shall set forth in detail the reasons why the request should be granted. The printed docket shall indicate the dates by which requests for coverage and requests for exclusion must be filed. The chief clerk shall refer any such requests to the judges of the appellate court for review and their decision on the requests shall be final. Before the judges approve of any request for coverage, they shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair hearing. The right, however, to permit or to exclude coverage, whether partially or totally, at any time in the interests of the administration of justice shall remain with the judges.

(3)(a) Generally, no broadcasting, televising, recording or photographing of any proceedings in appeals taken from trial court judgments in the following cases shall be permitted:

1. Family relations matters as defined in Gen.Stat., § 46b-1;
2. Cases involving trade secrets;

3. Cases involving sexual offense charges;

4. Cases which were closed to the public to comply with the provisions of state law.

(b) No broadcasting, televising, recording or photographing of any proceedings in appeals taken pursuant to the provisions of Gen.Stat., § 51-164x shall be permitted.

(4) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess.

(5) No audio broadcasting or audio recording of conferences in the courtroom among members of the court, between co-counsel or between counsel and client shall be permitted.

(6)(a) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned only in such location in the courtroom as shall be designated by the judges. To the extent possible that location shall provide access to optimum coverage. While court proceedings are in progress, the television camera operator shall operate the television camera only in that designated location. Videotape recording equipment and other equipment which are not component parts of a television camera shall be located outside the courtroom.

(b) Only one still camera photographer, carrying not more than two still cameras with not more than one lens for each camera, shall be permitted in the courtroom. The still camera photographer shall be positioned only in such location in the courtroom as shall be designated by the judges. To the extent possible that location shall provide access to optimum coverage. While court proceedings are in progress the still camera photographer shall photograph court proceedings only from that location.

(c) Only one audio system for television, broadcasting and recording purposes shall be permitted in the courtroom. Audio pickup for such purposes shall be accomplished from the existing audio system in the court facility. If there is no technically suitable audio system in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the judges.

(7) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses may be changed within the courtroom, provided that it is done in a quiet and unobtrusive manner.

(8) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the proceeding. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom without the approval of the judges and other appropriate authority.

(9) Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the judges to mediate any dispute as to the appropriate media representative or equipment for a particular proceeding. If any such medium shall not agree on equipment, procedures and personnel, the judges shall not permit that medium to have coverage.

(10) Except as provided by these rules, established restrictions upon broadcasting, televising, recording and photographing in areas adjacent to courtrooms shall remain in full force.

(11) The conduct of all attorneys with respect to publicity of court proceedings in the courtroom of the appellate court shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(12) If so voted by the judges of the appellate court, the word "judges" as used in these rules may be deemed to mean the chief judge of the appellate court or his designee(s).

(C)(1) The broadcasting, televising, recording or photographing of court proceedings by news media in the courtroom of the supreme court will be allowed subject to the limitations set forth herein.

(2) Any member of the news media seeking permission to broadcast, televise, record or photograph a court proceeding appearing on a printed docket of the supreme court, excluding any hearing on a motion, shall, not later than the Wednesday which is thirteen days before the term for which such printed docket is prepared, file a written request with the chief clerk of the supreme court and at the same time shall send by certified mail a copy of such written request to each counsel or pro se party of record. Endorsed on the request filed with the chief clerk of the supreme court shall be a certification of such mailing. If any counsel or pro se party of record wishes to be excluded from any broadcasting, televising, recording or photographing in a court proceeding appearing on a printed docket of the supreme court, excluding any hearing on a motion, he shall file a written request with the chief clerk of the supreme court not later than the Wednesday which is six days before the term for which such printed docket is prepared. The request shall set forth in detail the reasons why the request should be granted. The printed docket shall indicate the dates by which requests for coverage and requests for exclusion must be

filed. The chief clerk shall refer any such requests to the justices of the supreme court for review and their decision on the requests shall be final. Before the justices approve of any request for coverage, they shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair hearing. The right, however, to permit or to exclude coverage, whether partially or totally, at any time in the interests of the administration of justice shall remain with the justices.

(3) Generally, no broadcasting, televising, recording or photographing of any proceedings in appeals taken from trial court judgments in the following cases shall be permitted:

1. Family relations matters as defined in General Statutes § 46b-1;
2. Cases involving trade secrets;
3. Cases involving sexual offense charges;
4. Cases which were closed to the public to comply with the provisions of state law.

(4) No broadcasting, televising, recording or photographic equipment permitted under these rules shall be operated during a recess.

(5) No audio broadcasting or audio recording of conferences in the courtroom among members of the court, between co-counsel or between counsel and client shall be permitted.

(6)(a) Only one television camera operator, utilizing one portable mounted television camera, shall be permitted in the courtroom. The television camera and operator shall be positioned only in such location in the courtroom as shall be designated by the justices. To the extent possible that location shall provide access to optimum coverage. While court proceedings are in progress, the television camera operator shall operate the television camera only in that designated location. Videotape recording equipment and other equipment which are not component parts of a television camera shall be located outside the courtroom.

(b) Only one still camera photographer, carrying not more than two still cameras with not more than one lens for each camera, shall be permitted in the courtroom. The still camera photographer shall be positioned only in such location in the courtroom as shall be designated by the justices. To the extent possible that location shall provide access to optimum coverage. While court proceedings are in progress the still camera photographer shall photograph court proceedings only from that location.

(c) Only one audio system for television, broadcasting and recording purposes shall be permitted in the courtroom. Audio pickup for such purposes shall be accomplished from the existing audio system in the court facility. If there is no technically suitable audio system in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the justices.

(7) No broadcasting, televising, recording and photographic equipment shall be placed in or removed from the courtroom while the court is in session. Television film magazines or still camera film or lenses may be changed within the courtroom, provided that it is done in a quiet and unobtrusive manner.

(8) Only still camera, television and audio equipment which does not produce distracting sound or light shall be employed to cover the proceeding. The operator of such equipment shall not employ any artificial lighting device to supplement the existing light in the courtroom.

(9) Participating members of the broadcasting, televising, recording and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the justices to mediate any dispute as to the appropriate media representative or equipment for a particular proceeding. If any such medium shall not agree on equipment, procedures and personnel, the justices shall not permit that medium to have coverage.

(10) Except as provided by these rules, established restrictions upon broadcasting, televising, recording and photographing in areas adjacent to courtrooms shall remain in full force.

(11) The conduct of all attorneys with respect to trial publicity shall be governed by Rule 3.6 of the Rules of Professional Conduct.

(12) If so voted by the justices of the supreme court, the word "justices" as used in these rules may be deemed to mean the chief justice or his designee(s).

Commentary

Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Commentary

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

(4) A judge, in the exercise of his power of appointment, should appoint on the basis of merit, should avoid favoritism, and should make only those appointments which are necessary. He should not approve compensation of appointees beyond the fair value of services rendered.

Commentary

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

(5) A judge shall not knowingly advocate or knowingly participate in the appointment, employment, promotion or advancement of a relative in or to a position in the judicial department. For purposes of this provision, relative means grandfather, grandmother, father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require his disqualification.

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

Commentary

According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if the judge's or the judge's spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such

securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary

This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

[Canon 3 amended effective April 12, 1982; June 1, 1982; October 1, 1984.]

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extrajudicial activities are governed by Canon 5.

CANON 5

A Judge Should Regulate His Extrajudicial Activities to Minimize the Risk of Conflict With His Judicial Duties

A. **Avocational Activities.** A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Commentary

Complete separation of a judge from extrajudicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

B. **Civic and Charitable Activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each

organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same

terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation pursuant to statute.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canon 3 and as provided by statute.

Commentary

Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

Commentary

The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Commentary

A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extrajudicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extrajudicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

[Canon 5C amended effective October 1, 1982.]

CANON 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extrajudicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

[Canon 6 amended effective October 1, 1979.]

CANON 7**A Judge Should Refrain From Political Activity
Inappropriate to His Judicial Office****A. Political Conduct in General.**

(1) A judge should not:

- (a) act as a leader or hold any office in a political organization;
- (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;
- (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

(2) A judge should resign his office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that such a judge may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

(3) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. [Pub. Note: There is no B.]

**COMPLIANCE WITH THE CODE
OF JUDICIAL CONDUCT**

All full-time judges and family support magistrates appointed pursuant to Gen.Stat., § 46b-231(f) shall comply with this Code.

Trial Referees and Senior Judges. Trial referees and senior judges are not required to comply with Canon 5C.(2), D., and G. [Amended effective October 1, 1986; October 1, 1989.]

EFFECTIVE DATE OF COMPLIANCE

This Code shall become effective on October 1, 1974.

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

- (a) continue to act as an officer, director, or nonlegal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

APPENDIX D

Judicial Review Council Complaint Disposition, Subject Matter and Source Statistics

Table D-1. Judicial Review Council Disposition Statistics: CYs 1986-1991¹

	86	%	87	%	88	%	89	%	90	%	91	%	TOT	%
Number of complaints pending beginning of the year	5		9		6		10		6		5		41	
Number of complaints received during the year	42		29		35		38		36		47		227	
Number of complaints disposed of during the year	38		32 ²		31		42		37		25		205	
Complaint Disposition Before Probable Cause Hearing By Dismissal Point														
Dismissed because outside jurisdiction of council	10	26%	1	19%	6	19%	12	29%	6	16%	9	36%	44	21%
Dismissed after initial/minimal investigation	13	34%	15	47%	15	48%	20	48%	22	59%	13	52%	98	49%
Dismissed after substantial investigation	12	32%	9	28%	9	29%	8	19%	8	22%	2	8%	48	23%
Judge voluntarily resigned during investigation	1	3%	0	-	0	-	0	-	0	-	0	-	1	<1%
Number of Probable Cause Hearings	2	5%	5	16%	1	3%	2	5%	2	5%	0	-	17	8%
Cases dismissed after probable cause hearing	1	3%	5	16%	1	3%	1	2%	1	3%	0	-	9	4%
Judge privately admonished	1	3%	2	6%	1	3%	1	2%	1	3%	0	-	9	4%
Number of Open Hearings	0	-	0	-	0	-	1	2%	0	-	1	4%	2	1%

Table D-1 (continued)

	86	%	87	%	88	%	89	%	90	%	91	%	TOT	%
Judge publicly censured after open hearing	-	-	-	-	-	-	-	-	-	-	1	4%	1	<1%
Case dismissed after open hearing	-	-	-	-	-	-	1	2%	-	-	0	-	1	<1%
Number of disability hearings	1	3%	-	-	-	-	-	-	-	-	-	-	1	<1%
Judge granted disability retirement	1	3%	-	-	-	-	-	-	-	-	-	-	1	<1%
Complaints pending at end of reporting year	9	21%	6	21%	10	32%	6	14%	5	14%	27	57%	99	44%

Source: Judicial Review Council Third Report and Council Records

1. All percentages in table are based on complaints disposed of, as opposed to received in a year, except for percentages regarding complaints pending at end of the year, which are based on complaints received during year.
2. The number of dispositions below does not add up to this number.

Table D-2. Judicial Review Council: Subject Matter of Complaint Statistics for CYs 1981 - 1989

Subject matter	1/1/81-12/31/85		1/1/86-12/31/89	
	#	%	#	%
Allegations of improper temperament, i.e., impatience, prejudice, bias, disrespectful conduct, improper judicial conduct, improper judicial language, lack of fairness or abuse of authority on the part of the judge	45	25%	70	50%
Criminal matters	20	11%	12	8%
Divorce or family matters	18	10%	19	13%
Small claims matters	16	9%	5	3%
Landlord/tenant or other real estate matters	12	7%	3	2%
Conflict of interest on part of judge	4	2%	4	3%
Failure to follow rules	9	5%	7	5%
Sentencing matters	6	3%	3	2%
Ex parte conduct	6	3%	6	4%
Failure to decide matters promptly	3	2%	1	1%
Probate matter	1	1%		
Judges practicing law after appointment	3	2%		
Foreclosure issues	3	2%		
Contract issue	1	1%		
Miscellaneous	28	16%	15	10%
Health Disability	2	1%	2	1%
TOTAL	177		149*	

Source: Judicial Review Council Second and Third Reports

* This number is reported by the council in the subject matter section of the report; the number is less than the total complaints reported before the council in the four year period 1/1/86-12/31/89.

**Table D-3. Judicial Review Council:
Source of Complaint Statistics for CYs 1981 - 1985**

	1/1/81-12/31/85	
Source	#	%
Litigants, members of their families or friends	157	89%
Non-litigation members of the public	11	6%
Attorneys	5	3%
Council initiated	4	2%
TOTAL	177	

Source: Judicial Review Council Second Report

APPENDIX E

Survey of Connecticut Attorneys on the Judicial Review Council

A questionnaire about the Judicial Review Council designed by the program review committee staff was mailed to nearly 1,400 attorneys practicing in Connecticut. Completed questionnaires were received from almost 40 percent (537) of those surveyed. The sample was drawn from current membership lists of the Connecticut Bar Association--Family, Criminal Justice, Litigation, and General Law Sections, the Connecticut Trial Lawyers Association, and the Connecticut Defense Lawyers Association. A copy of the questionnaire, which includes a tabulation of responses, is attached. Survey results are highlighted below.

In general, the attorneys who responded to the committee questionnaire were experienced lawyers. The number of years practiced in Connecticut ranged from 1 to 59, while the median was 10 years. One-third of the respondents had practiced in Connecticut for 5 years or less and 10 percent had practiced for more than 25 years.

Survey respondents, for the most part, also have frequent contact with the judicial personnel subject to council oversight (i.e., Superior, Appellate, and Supreme Court judges, family support magistrates, senior judges, and referees). Almost 90 percent reported that they interacted with judges, magistrates, or referees at least one a week; one-third interacted with these types of judicial personnel at least three times per week.

A significant number of attorneys surveyed had little or no knowledge of the Judicial Review Council or the kind of conduct that it can sanction. Just over half of the respondents reported that they were not very or not at all knowledgeable about either the council (54 percent) or the conduct it can sanction (53 percent). Knowledge of the council and sanctionable conduct appears to correspond somewhat with years of practice (e.g., attorneys with five or fewer years of experience were more likely to report lack of knowledge). However, substantial numbers of respondents (from about 30 percent up to 75 percent) were not very or not at all knowledgeable within every category of experience examined (i.e., 25 years or more; 16 to 25 years; 11 to 15 years; 6 to 10 years; 5 or fewer years).

Slightly more than half (53 percent) of the surveyed attorneys answered yes when asked if they had ever witnessed what they considered sanctionable conduct by a judge. None of these 278 respondents, however, had filed a complaint about the conduct they witnessed with the Judicial Review Council. When asked why a complaint was not filed, many of the 252 respondents who answered cited fear of reprisals or retaliation (30 percent), or, similarly, believed it was not worth the risk or effort (17 percent). Another group (16 percent) stated they did not know about the council or its complaint procedure. Among the other reasons given by the remainder of respondents (37 percent) were: the conduct was not related to their client or case; the conduct did not seem that serious or seemed to be an isolated incident; and ineffectiveness of the council.

A small number of these respondents (50 of 273) reported that they did take other action related to the conduct they witnessed. Other actions reportedly taken included talking to the judge involved, discussing the incident with colleagues or supervisors, filing an objection or an appeal, or noting the conduct in the trial questionnaire provided by the Judicial Department.

The nature of the sanctionable conduct witnessed by the survey respondents included improper temperament, ex parte contact, lack of impartiality, incompetence, or some combination of these, as well as "other" (e.g., sexual harassment). Alone or in combination with other conduct, improper temperament was the most frequently cited (by 38 percent of respondents), followed by incompetence (24 percent), lack of impartiality (21 percent), ex parte contact (10 percent), and other (6 percent).

The attorneys surveyed were also asked whether a client had ever filed a complaint with the Judicial Review Council. About one-third state they did not know while the majority (61 percent) said no; only 15 respondents reported that a client had filed a complaint with the council.

The overwhelming majority of respondents (86 percent) stated that they would advise a client to file a complaint if they believed a judge had engaged in sanctionable conduct. Those answering no to the question (14 percent) explained their position by citing reasons similar to those given for not filing a complaint on their own (e.g., fear of reprisals, council ineffectiveness, etc.)

The final questionnaire item asked whether the surveyed attorneys believe any shortcomings exist in the authority, responsibility, or operations of the Judicial Review Council, and if so, to describe the shortcomings and how the respondent would address them. Lack of awareness of the council was indicated by the fact that only about half of the respondents (54 percent) answered this question; the remainder either left the item blank or specifically stated they had insufficient knowledge to comment.

Among the 293 attorneys who answered the question about council shortcomings, responses were evenly divided between yes and no. About half of these respondents (159) provided specific descriptions of and/or proposed solutions to shortcomings in the council's authority, responsibility, or operations.

**LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE:
ATTORNEY SURVEY ON THE JUDICIAL REVIEW COUNCIL**

1. How many years have you been an attorney practicing in Connecticut? ____ years

N=502 Median=10 years Range=1 to 59 years

2. In the course of your practice, how often, on average, do you interact with Connecticut Superior, Appellate, and Supreme Court judges, family support magistrates, senior judges and referees? (Circle the number that corresponds to your response.)

- N=532
1. At least three times a week (33%)
 2. At least once a week (55%)
 3. Less than three times a month (8%)
 4. Less than once every two months (5%)

3. How knowledgeable are you about the Judicial Review Council?

- N=537
- | | | | |
|---------|-------------|-------------|---------------|
| 1. Very | 2. Somewhat | 3. Not very | 4. Not at all |
| 5% | 41% | 43% | 11% |

4. How knowledgeable are you about the kind of conduct that can be sanctioned by the Judicial Review Council?

- N=536
- | | | | |
|---------|-------------|-------------|---------------|
| 1. Very | 2. Somewhat | 3. Not very | 4. Not at all |
| 5% | 41% | 43% | 10% |

5. Have you ever witnessed what you consider sanctionable conduct by a judge?

- N=526
1. No (47%)-----> **IF NO, PLEASE SKIP TO QUESTION 10**
 2. Yes (53%)

IF YOU ANSWERED YES TO QUESTION 5, please answer the following questions (6 through 9), referring to the most recent incident of sanctionable conduct, if there has been more than one incident.

N=277 6. What was nature of the sanctionable conduct you witnessed (circle one):

1. Improper temperament (28%)
 2. Ex parte contact (1%)
 3. Lack of impartiality (7%)
 4. Incompetence (9%)
 5. Other (please explain) (4%) _____
- (51% circled more than one of the items listed)
-

N=278 7. Did you file a complaint with the Judicial Review Council?

1. No (100%)
2. Yes -----> **IF YES, PLEASE SKIP TO QUESTION 8**

N=252 7A. IF NO, why not? _____

N=273 7B. Did you take any other action related to the conduct you witnessed?

1. No (82%)
 2. Yes (18%)(please describe) _____
-

N=0 8. If you filed a complaint with the council, how satisfied were you that the process was fair:

1. Very Satisfied 2. Satisfied 3. Dissatisfied 4. Very dissatisfied

OR 5. Unable to assess (e.g., insufficient information as to process)

N=0 9. If you filed a complaint with the council, how satisfied were you with the outcome:

1. Very Satisfied 2. Satisfied 3. Dissatisfied 4. Very dissatisfied

OR 5. Unable to assess (e.g., insufficient information as to outcome)

10. Has a client of yours ever filed a complaint with the Judicial Review Council? 1. No 2. Yes 3. Don't Know

N=531 61% 3%
36%

10A. IF YES, what was nature of the complaint (describe most recent one if there were multiple complaints):

N=15 1. Improper temperament (2)

2. Ex parte contact (0)

3. Lack of impartiality (6)

4. Incompetence (2)

5. Other (0) (please explain) _____

(5 respondents circled more than one of the items listed)

11. Would you advise a client of yours to file a complaint if you believed a judge had engaged in sanctionable conduct? 1. No 2. Yes

N=491 14% 86%

N=73 11A. IF NO, why not? _____

12. Do you believe any shortcomings exist in the authority, responsibility, or operations of the Judicial Review Council? 1. No 2. Yes

N=293 50% 50%

N=159 12A. IF YES, please specify what the shortcomings are and how you would address them. Please use the back of this survey for your response or attach a separate piece of paper if you need more space.

PLEASE RETURN COMPLETED SURVEY IN ENCLOSED ENVELOPE BY FEBRUARY 10, 1992
THANK YOU FOR YOUR PARTICIPATION

APPENDIX F

Survey of Connecticut Judges on the Judicial Review Council

The program review committee staff designed and mailed a questionnaire about the Judicial Review Council to all current judges of the Superior, Appellate, and Supreme Courts as well as to senior judges in Connecticut. Over half of the 173 judges surveyed (54 percent) returned completed questionnaires. A copy of the questionnaire, along with a tabulation of responses, is attached. Results of the judges' survey are highlighted below.

The 94 judges who responded to the committee survey represented all levels of experience. Nearly 60 percent had been judges for 8 or more years, over one-quarter (26 percent) for more than 15 years. Twenty-two percent had been judges from 3 to 8 years while 20 percent had less than 3 years experience as a judge in Connecticut.

Based on their responses, the overwhelming majority of the judges surveyed appear to be familiar with both the Judicial Review Council and sanctionable judicial conduct. Almost 90 percent and 95 percent of the respondents, respectively, said they were somewhat or very knowledgeable about the council and about the kind of conduct it can sanction.

To their knowledge, one-quarter of the judges surveyed had a complaint against them filed with the Judicial Review Council while 75 percent reported they had not. Almost two-thirds of the 23 judges complained against had been the subject of only one complaint while more than one complaint had been filed against the remainder. When asked to categorize the nature of the most recent complaint filed with the council, the majority (13) of the 20 respondents to this question described the complaint as something other than improper temperament, ex parte contact, lack of impartiality, or incompetence. Among the complaints described as other were several instances where judges noted complainants were unhappy with the outcomes of their cases or were questioning the judge's legal interpretations or decisions.

Judges complained against were asked to evaluate several aspects of the Judicial Review Council process. Two of the twenty-two respondents who answered the process questions noted that their complaint proceedings were still pending; most of the remainder were satisfied or very satisfied with: the way they were kept informed by the council about the status of the complaint (68 percent); their opportunity to be heard (80 percent); the fairness of the process (77 percent); and the outcome of the process (91 percent). Several judges were dissatisfied or very dissatisfied with certain aspects of the process, but were satisfied with the outcome. One judge who was generally critical of the process but very satisfied with the outcome of the proceeding noted the satisfactory outcome was achieved at great expense.

The surveyed judges, when asked their view on the proper level of confidentiality for the Judicial Review Council complaint process, were overwhelmingly supportive of the status quo. Eighty-five percent believed that current confidentiality rules are proper while 11 percent thought that all complaints dismissed prior to a probable cause determination should be confidential until

dismissal and then, along with disposition and reasons for dismissal, should be made available to the public. The remainder (4 percent) supported some minor modification of current rules or, in one case, believed that all complaints should be public from the moment they are filed. Attitudes about confidentiality were virtually the same among judges who had been the subject of filed complaints and those who had not.

When asked whether there is a need for a judicial conduct review organization, almost 82 percent of the respondents answered yes. Nearly one-quarter of the judges surveyed (23 percent) had no opinion on the overall performance of the Judicial Review Council over the past ten years but 65 percent rated the council's performance as either excellent or good. Council performance was rated as good or excellent by 85 percent of the 66 judges who were very or somewhat knowledgeable about the council and had an opinion on its performance; ratings of the remaining 15 percent were either fair or poor.

Over 80 percent (77) of the surveyed judges responded to the final questionnaire item that asked whether shortcomings exist in the authority, responsibility, or operations of the Judicial Review Council, and, if so, how to address them. Almost two-thirds (65 percent) of these respondents did not believe any shortcomings existed in the council; thirty-five percent believed shortcomings existed and provided additional descriptive comments along with proposed corrective actions.

APPENDIX G SAMPLE LETTERS

JUDICIAL REVIEW COUNCIL

P. O. BOX 308

MANCHESTER, CONNECTICUT 06040

JOHN D. LABELLE, ESO.
EXECUTIVE DIRECTOR

WILLIAM BRONSON, ESO.
CHAIRMAN
THEL S. SOROKIN, ESO.
SECRETARY
EUGENE C. BATES
HON. G. SANSFIELD FORD
HON. HOWARD J. MORAGHAN
HON. JAMES M. HIGGINS
JOHN DONNELLY, M.D.
MICHAEL J. DALY
REBECCA S. BREED
RICHARD C. LEE
DANIEL J. MAHANEY, ESO.

May 23,

Mr.

Dear Mr.

RE: COMMISSIONER

- SMALL CLAIMS COURT

I acknowledge receipt of your communication of May 22,
This is to advise you that the Judicial Review Council does
not have any jurisdiction over small claims magistrates.

Very truly yours,

John D. LaBelle
Executive Director

JDL:T

