



A REPORT  
TO THE  
MONTANA  
LEGISLATURE

LEGISLATIVE AUDIT  
DIVISION

23P-03

PERFORMANCE AUDIT

*The Judicial Standards  
Commission: Assessing  
Accountability and  
Transparency in the  
Judicial Complaint Process*

*Judicial Branch*

AUGUST 2024

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Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are conducted at the request of the Legislative Audit Committee, which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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# LEGISLATIVE AUDIT DIVISION

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August 2024

The Legislative Audit Committee  
of the Montana State Legislature:

We are pleased to present our performance audit of the Judicial Standards Commission, administratively attached to the Office of the Court Administrator within the judicial branch.

This report provides the Legislature information about the structure and processes of the Judicial Standards Commission. This report includes recommendations for standardizing processes, increasing transparency, and improving investigations of the Judicial Standards Commission. A written response from the Judicial Standards Commission is included at the end of the report.

We wish to express our appreciation to the Judicial Standards Commission and Office of the Court Administrator personnel for their cooperation and assistance during the audit.

Respectfully submitted,

*/s/ Angus Maciver*

Angus Maciver  
Legislative Auditor



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## ELECTED, APPOINTED, AND ADMINISTRATIVE OFFICIALS

	<u>Name</u>	<u>District</u>	<u>City</u>	<u>Term Expires</u>
<b>Judicial Standards Commission</b>	Hon. Mike Menahan, Chair	1st Judicial District	Helena	June 30, 2025
	Hon. Randal I. Spaulding	14th Judicial District	Roundup	June 30, 2025
	Jill Gerdrum, Attorney		Missoula	June 30, 2025
	Roger Webb, Citizen		Park City	June 30, 2025
	Seth Berglee, Citizen		Bigfork	July 1, 2027
<b>Montana Judicial Branch</b>	Mike McGrath, Chief Justice, Montana Supreme Court			
	Beth McLaughlin, Court Administrator			





# MONTANA LEGISLATIVE AUDIT DIVISION

## PERFORMANCE AUDIT Assessing Accountability and Transparency in the JSC JUDICIAL BRANCH

A report to the Montana Legislature

### BACKGROUND

The Montana Judicial Standards Commission is a five-member, appointed board established by the Montana Constitution. The commission accepts and reviews complaints of ethical violations of the Montana Code of Judicial Conduct against Montana judges from the public, legal professionals, legislators, and other judges. Constitutional provisions give the commission authority to develop its own procedural rules for the discipline and removal of judges. The commission has discretion in determining whether complaints have sufficient evidence to prove misconduct and to dismiss, investigate, issue informal corrective action, or recommend formal disciplinary action to the Supreme Court. Funding for investigations and legal counsel is requested as needed from the judicial branch.

Agency: Judicial Branch  
Program Expenses:  
FY 2021: \$22,395.53  
FY 2022: \$9,289.17  
FY 2023: \$37,780.48

The Montana Judicial Standards Commission (JSC) is a group of five appointed members created by the Montana Constitution to discipline and recommend the removal of judges who violate the Montana Code of Judicial Conduct. JSC procedural rules cover confidentiality, grounds for discipline, sanction authority, and the complaint review process. From 2012 to 2022, 96% of complaints in Montana were dismissed because they lacked JSC jurisdictional authority, evidence of ethical violations, or the case could more appropriately be appealed. The JSC issues informal discipline or recommends formal sanctions to the Montana Supreme Court. Its membership, structure, review processes, and dismissal rates are similar to most other state judicial conduct commissions. To increase public trust and maintain judicial integrity, the JSC should implement member training, formalize decision-making processes, enhance transparency, and increase its independence from the judicial branch.

### **KEY FINDINGS:**

**The Judicial Standards Commission follows practices similar to all other judicial conduct commissions across the nation.** Its membership, size, jurisdiction, and review procedures follow national standards and best practices. All commissions share common procedural elements, although no two states are exactly alike. The JSC is appropriately established to fulfill its role to review and adjudicate judicial misconduct, and the rate at which it dismisses complaints is in line with the national average.

**The Judicial Standards Commission's rules lack clarity in review and investigation practices.** The commission's current procedural rules do not identify how members make decisions throughout the review and disciplinary processes, what factors are used in those decisions, and what information is required from investigations to issue discipline appropriately. The JSC has inconsistently reviewed complaints and issued corrective actions, and would benefit from more definitive guidance in the rules.

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For the full report or more information, contact the Legislative Audit Division.

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### **The JSC has limited options for informal corrective actions.**

The commission issues private letters of admonition and reprimand as its only permitted corrective actions. Most states have several options for informal discipline in addition to private communications with a judge. The JSC could increase the number of informal corrective actions available to it, allowing it to address more ethical violations and multiple complaints against judges.

**JSC members do not receive formal training.** Training is not a requirement for commission members, and JSC members did not know of structured training opportunities available to judicial conduct commissions. Members learn through experience and are, at times, unsure about the commission's extent of authority, available resources for investigations, and expected protocols in the review process. Formalized training could improve members' overall understanding of the JSC's duties and functions.

**The JSC uses retired district court judges for more than half of its documented investigations.** Although the JSC recommends few complaints for investigation, the use of retired judges could result in real or perceived bias in investigations and recommendations for corrective actions. Retired judges may have issues of independence if they have personal and professional relationships with their peers. The JSC could utilize investigators outside the judicial branch to increase independence in the investigative process.

**The JSC has no budget authority and relies on the judicial branch to fund its operations as needed.** The JSC procedural rules mention control over its funding, but the commission has no budget or funding authority. The judicial branch provides funds for investigations and legal counsel as needed. If the judicial branch or legislature denies supplemental funding, it could jeopardize investigations. Having its own funding could reduce perceived independence issues between the JSC and the judicial branch.

**The JSC provides limited information about complaint outcomes to complainants and the public.** JSC annual reports lack details regarding the substance and outcomes of complaints. Other states have found ways to provide additional transparency while maintaining confidentiality where appropriate. Additional transparency could increase public trust in the JSC and the judiciary.

### **RECOMMENDATIONS:**

In this report, we issued the following six recommendations to the Judicial Standards Commission.

**RECOMMENDATION #1 (page 19):***Governance, Risk Assessment, and Planning*

We recommend the Judicial Standards Commission develop and implement more prescriptive written procedures including, but not limited to, typical judicial conduct commission processes such as complaint receipt and review, requirements for investigations and written documentation of the results, and decision paths for communication with complainants, dismissal, and discipline.

**Department Response: Concur**

**RECOMMENDATION #2 (page 23):***Governance, Risk Assessment, and Planning*

We recommend the Judicial Standards Commission amend the JSC Procedural Rules to include multiple options for informal corrective action when minor violations are identified and allow to the commission to act quickly when circumstances merit.

**Department Response: Concur**

**RECOMMENDATION #3 (page 24):***Governance, Risk Assessment, and Planning*

We recommend the Judicial Standards Commission develop and implement a training plan requiring new member orientation and regular review of the state judicial system, legal terminology, complaint review and investigation processes, decision and disciplinary factors, and all other relevant aspects of the commission's duties.

**Department Response: Concur**

**RECOMMENDATION #4 (page 26):***Procurement, Contracting, and Grants Management*

We recommend the Judicial Standards Commission establish processes regarding investigations to identify and retain one or more persons with investigative experience and suitable independence from judges under investigation.

**Department Response: Concur**

**RECOMMENDATION #5 (page 28):***Internal Control*

We recommend the Judicial Standards Commission establish a budgetary line item and authority for the commission's operations.

**Department Response: Partially Concur**

**RECOMMENDATION #6 (page 31):***Governance, Risk Assessment, and Planning*

We recommend the Judicial Standards Commission identify opportunities to provide more transparency for complainants during the complaint review process and details of judicial complaints and the JSC's decision for disposition to the public during the reporting process.

**Department Response: Concur**



## Chapter I - Introduction

### Introduction

In 1972, the Montana Constitution established a Judicial Standards Commission, an alternative to the lengthy impeachment process for judicial discipline. The new commission was modeled after those in California and New Mexico. Every state has a Judicial Conduct Commission (JCC), which varies in size and authority but shares the goal of investigating judicial misconduct and holding judges accountable. Since the 1940s, JCCs have established rules for reviewing complaints and deciding on dismissals or disciplinary actions.

The Montana Judicial Standards Commission (JSC or commission) reviews and investigates complaints against judges who allegedly violate the Montana Code of Judicial Conduct (code). Anyone, including the public, judges, attorneys, and litigants, can submit notarized complaint forms by mail, available on the judicial branch website. The JSC can recommend formal discipline to the Supreme Court for severe violations if ethical violations are confirmed. For less serious issues, the JSC may issue private and informal corrective measures. The five commission members are all volunteers and meet six to eight times a year to consider an average of 60 complaints annually.

In 2019, 2021, and 2023, the Montana legislature reviewed bills to revise judicial laws and improve judge discipline processes. In 2021, House Joint Resolution 40 (HJ40) passed, prompting a study and performance audit of the Judicial Standards Commission to compare its structure and processes with those in other states. The study did not suggest legislation. The Legislative Audit Committee prioritized this performance audit based on HJ40.

### Model Code of Judicial Conduct

The Model Code of Judicial Conduct was developed by the American Bar Association in 1990 as the standard for judicial conduct commissions across the nation to ensure judges maintain the highest integrity in behavior, both on and off the bench. The Model Code provides baseline rules for disciplinary agencies to regulate judicial conduct. Each state's judicial conduct commission has largely adopted the Model Code, tailored to their unique judicial systems. Montana adopted the Model Code and made minor changes to the rules in 2009 and 2014 in the Montana Code of Judicial Conduct. Figure 1 lists the four canons that all active Montana judges and judicial candidates must abide by.

Figure 1

#### Montana Code of Judicial Conduct Canons



#### Canon 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.



#### Canon 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.



#### Canon 3

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.



#### Canon 4

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

**Source: Compiled by the Legislative Audit Division.**

Judges may be accused of violating ethical standards in the code, such as judicial bias or prejudice against a litigant; yelling or using profanity in the court; having communication with one side without notice to the other side (*ex parte*); or committing a crime, which generally fall under one of the canons. Most often, commissions dismiss complaints that would properly be appealed to a higher court, do not contain allegations of ethical violations, or because the commission lacks jurisdiction as the appropriate body for review (such as dismissing a complaint against an attorney or a court employee). These commissions do not function as appellate courts and cannot overturn a judge's ruling as part of an ethical complaint.

## **Scope and Objectives**

The audit examined the structure of the Montana Judicial Standards Commission and its complaint review process compared to 49 other states plus the District of Columbia. We evaluated similarities and differences in judicial systems, commission authority, and complaint dismissal rates. We also assessed the transparency of public complaint information.

In addition to our examination of all other states' judicial conduct commissions' structures and processes, we reviewed 11 years' of JSC complaints (2012 to 2022) for consistency, complaint trends, repeat complaints against judges, and complaint dispositions. Using our statutory authority to examine all agency records, we reviewed 656 complaints and all relevant documentation, confidential and otherwise, such as court records, transcripts, and investigative reports that were available to the JSC. We also reviewed all available audio recordings of meetings, noting that confidentiality extends not only to all papers filed with the JSC but also to the meetings themselves.

Throughout the report, we acknowledge the pending effect of statutory changes, but these changes were not implemented in time to inform our audit work.

We developed two objectives to evaluate the JSC's structure, membership, and decision-making consistency.

1. Does the current judiciary structure, composition and authority of the Montana Judicial Standards Commission align with other states for size, experience, jurisdiction, and disciplinary authority?
2. Does the Montana Judicial Standards Commission review complaints consistently and provide disciplinary actions and recommendations according to internal rules and common national practices?

## **Methodology**

To answer our objectives, we completed the following steps:

- Reviewed state law, rules, and JSC procedures.
- Conducted interviews with commission members, judicial branch staff, the Court Administrator, and the Chief Justice of the Montana Supreme Court.
- Conducted interviews with Montana Legal Services, the Montana Office of Disciplinary Counsel, the Supreme Court Self-Help Program, and two national experts.

- Reviewed best practices and standards from the National Center for State Courts, the Center for Judicial Ethics, the Institute for the Advancement of the American Legal System, and the American Bar Association.
- Analyzed annual reports and judicial websites from Montana and other states where that information was available.
- Conducted a file review of 656 JSC complaints filed from 2012 to 2022.
- Reviewed commission meetings from 2014 (the earliest date for which recordings are available) to 2022 and observed a JSC meeting in 2023.
- Developed, distributed, and analyzed a judicial survey sent to 165 current judges in Montana; we received 116 responses with district court and local court judges as the primary respondents, resulting in a 70 percent response rate.
- Developed, distributed, and analyzed a response survey to 170 complainants from 2018-2022; we received 40 responses, resulting in a 23 percent response rate. The respondent group is not representative of all complainants in this time frame as there was a high number of instances of invalid contact information. Still, it provided an opportunity for some complainants to tell us about their experience with the complaint process.

To verify our approach to addressing the objectives, we contracted with an outside consultant to review certain methodologies and assess the results of the work to compare the JSC with peer entities and the outcome of our review of the JSC complaint process. The consultant, an attorney and expert in judicial ethics and regulation of the legal profession, provides online and in-person training to judges and attorneys nationally and internationally. He reviewed the audit plan and outcomes of the state review and complaint file analysis and determined that the methodologies and audit work provided a sound basis for the conclusions reached.





## Chapter II - Comparing National JCC Structures and Analyzing Montana Judicial Complaints

### Introduction

Our first audit objective involved comparing other states' JCCs to Montana's JSC by reviewing state judicial conduct websites and annual reports. This included examining member composition, establishment methods, review systems, court structures, jurisdiction, and the structural similarities and review processes of commissions nationwide.

### Structural Components of JSC and Other States' Commissions Are Similar

Compared to Montana's establishment through constitutional provision, JCCs in the United States were established by the Supreme Court in 10 states, by statute in 10 states including Washington D.C., and by the state constitution in the remaining 31 states. All JCCs typically include judges, attorneys, and citizens (who are neither attorneys nor active, part-time, or retired judges). The Montana Constitution requires that the JSC have two district court judges, one attorney who has practiced law in Montana for at least 10 years, and two citizens who are neither judges nor attorneys as its members. Members serve staggered four-year terms. Other states prescribe similar lengths of JCC members' service time to that of the JSC, but most are limited in the number of terms served. The JSC, with five members, is the second smallest of all states, ranging from three members in Oklahoma to 28 members in Ohio. Fewer than ten other states have alternates as designee members, whereas the JSC does not have such a provision.

National guidelines suggest that membership in these commissions should be balanced with no category of members having outsized influence over another. However, very few states follow this best practice. If Montana were to consider changing the number of JSC members, a constitutional amendment would be required. JSC members indicated that the comparatively small size of the commission does not affect the quality or efficiency of the complaint review process.

### All Active Judges and Supreme Court Justices in Montana are Within the JSC's Jurisdictional Authority

Montana has several types of courts and judges which are overseen by the Montana Supreme Court, the highest appellate court in the state. The state's district court judges rule over civil and criminal cases, lawsuits against the State of Montana, and appeals from lower courts. City courts and most justice of the peace courts are primarily courts of limited jurisdiction and are not courts of record. The remaining courts, whose judges are within the JSC's authority, include justice courts of record, municipal courts, the Montana Workers' Compensation Court for workers' compensation disputes, and the Water Court for adjudicating existing water rights.

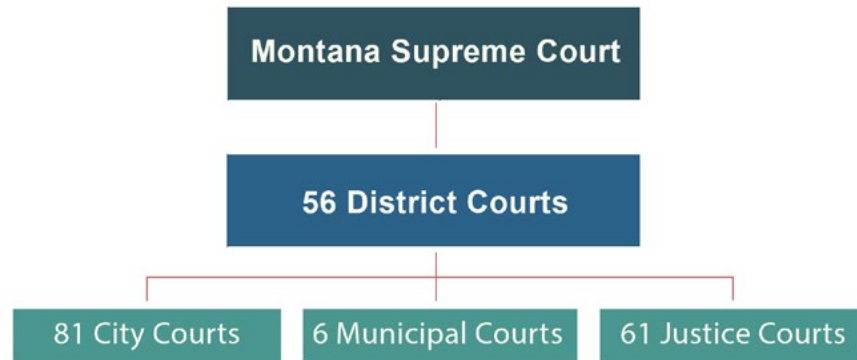
According to data from the Montana judicial branch, there are 111 limited court judges (including 69 city court judges and 65 justices of the peace, with 34 of those judges serving both city court and justice court), along with 11 municipal court judges. There are also 51 district court judges, seven standing masters, and three special court judges (data is from the *Lawyer's 2023 Deskbook and Directory*).

The Montana JSC has disciplinary authority over all part-time and full-time judges and judicial candidates, as well as retired judges who return to the bench in a substitute capacity. The commission does not have jurisdiction over court personnel or state agency boards. JCC jurisdiction can vary among states and is based on court structures and the duties of judicial officers. In Montana, neither city judges nor justices of the peace are required to be attorneys. Thus, more than half the judges in the state are not required to be licensed attorneys.

Figure 2

**Montana Court System**

The JSC has jurisdiction over the entire Montana court system, though the number of courts and judicial positions may not necessarily align.



Source: Compiled by the Legislative Audit Division.

### **JSC Appointment Process is Similar to Other States but Term Dates No Longer Evenly Staggered**

All states use similar appointing parties to select commission members: the governor, state bar, legislature, and/or the state's highest court. Prior to 2023, Montana Code Annotated required the two district court judges elected by all district court judges and appointed by the Supreme Court, the attorney to be appointed by the Supreme Court, and two citizens to be appointed by the governor. The appointment process remained largely unchanged for many years after the creation of the JSC until the addition of senate confirmation of all five members required by House Bill (HB) 380 in the 2021 legislative session. In 2023, HB 326 further amended the appointment process for the judicial and attorney positions on the commission. The house speaker will appoint district court judges, and the attorney general will appoint the attorney. The citizen position appointments have not changed and will continue to be appointed by the governor. All members are appointed to four-year staggered terms with no limits on the number of terms they can serve.

In June 2025, four of the five JSC members' terms of service will end; one member will remain with only two years of experience on the commission. Members expressed concern about maintaining continuity of knowledge and history when several terms expire simultaneously. We looked at how other JCCs maintain the continuity of members and found that most require evenly staggered terms. Vermont's commission has a specific method of staggering members: three members – one judge, attorney, and layperson – are appointed for one year; three of each are appointed for two years; and three of each are appointed for three years. After that, all regular terms are three years. Other states are not as specific but do include term limits.

Compared to Montana's composition, members of the Delaware Court of the Judiciary are appointed by the Chief Justice. They may serve up to four years, with none appointed to serve more than two consecutive terms. In Massachusetts, commission members are appointed by two different courts and the governor and serve non-renewable terms of six years. Iowa's Judicial Qualifications Commission serves staggered six-year terms with no possible second term. California's Commission on Judicial Performance members cannot serve more than two four-year terms or for more than 10 years if appointed to fill a vacancy.

### **Single-Tier Review System is Commonly Used by Other States and by JSC**

The JSC operates as a single-tier system where all members function as a single unit conducting initial reviews, contracting with outside persons to conduct investigations, issuing informal corrective actions, or moving complaints forward to formal hearings with hired counsel, and making recommendations to the Supreme Court for public sanctions. Nationally, most states function in this manner. A few states have adopted a two-tier system separating the review and investigation functions from the disciplinary functions of judicial discipline. Under this model (often referred to as a bifurcated system), one subset of JCC members investigates allegations of judicial misconduct and determines whether to file formal charges and, if charges are filed, a second subset prosecutes the matter, which may involve holding a hearing and often hiring outside counsel to handle the proceeding. Other states use a two-panel system where commission members comprise one body, but members rotate between investigative and adjudicative roles. With only five members on the JSC, instituting a two-tier or two-panel system in Montana would be challenging. National experts say that a single-tier system does not appear to interfere with judges' due process during a commission's complaint review.

### **Judicial Representation on Commissions Varies Across the Nation**

The number and type of judges serving on JCCs often depend on the type of courts and the method of judicial selection adopted by each jurisdiction. Some states have many levels of their judicial system represented on their JCC, such as the Texas State Commission on Judicial Conduct, which includes judges from municipal, justice, county, district, and appellate courts. South Dakota's Judicial Qualifications Commission has two circuit court judges although it has authority over circuit court judges and magistrate courts. Arizona's Commission on Judicial Conduct includes six judges from the court of appeals, superior court, justice court, and municipal court. This contrasts sharply with Hawaii, which has no judges on its commission, although the state has several different court levels. Montana, which has no appellate court between the district court and the Supreme Court, has representation on the JSC only by judges from the district court level.

As one of the smallest JCCs in the nation, the current number of commission members does not appear to pose an issue compared to the number of judges within its jurisdiction.

## **JSC Complaint Process Review Indicates Practices are Also Similar to Other States**

As part of audit fieldwork, we examined the JSC complaint review process by reviewing commission rules, interviewing commission members, assessing complaint files, and observing JSC meetings. We provide an overview of the complaint review process in the following sections. We also distributed surveys to all active judges across the state and a group of complainants who filed with the JSC between 2018 and 2022. The survey response aimed to understand how judges and complainants perceive the commission's duties and work. General aggregated responses from both surveys follow in the remainder of this report.

### **Filing an Ethical Complaint is Similar for All Judicial Conduct Commissions**

The judicial branch website provides information about the commission and the filing process, download links to the complaint form and how to complete it as well as the Montana Code of Judicial Conduct, the JSC procedural rules, and the most recent annual report. Any member of the public, including attorneys and other judges, can file an ethical complaint. The JSC can also send a complaint form to complainants upon request. Complainants must mail in their complaint and may include copies of letters, transcripts, or documents to support the complaint, along with case information if the judge presided over a case.

For some people, including judges, filing a judicial complaint can be challenging as the JSC does not accept anonymous complaints. The file review revealed some informal concerns were registered by judges who wished to withhold their names from the respondent judge because they did not want to get involved in the complaint process or to safeguard working relationships with peer judges. We observed that some litigants feared retribution from the respondent judge if they filed a complaint, and at least three attorneys who filed complaints on behalf of their clients had concerns about career-threatening retribution if they appeared before that same judge after complaint disposition. The JSC requires a notarized signature on the complaint form, which can be a barrier for some people, particularly those who are incarcerated. All states have the same general process for filing, although some JCCs allow anonymous submissions, do not require a notarized signature, and have online submission systems.

In rare occurrences, the JSC has opened an inquiry when it independently identifies a need to investigate a judge's behavior, as the JSC's procedural rules state that a written complaint is not required to begin disciplinary proceedings. Most other states do the same. Accepting anonymous complaints may encourage complainants who fear retribution but may also lead to additional frivolous complaints against judges.

### **All JCCs May Ask for Removal Due to a Judge's Disability**

Commissions may privately negotiate a removal due to disability (such as a mental health issue or substance abuse) that prevents the judge from performing judicial and administrative duties competently and diligently.

The Institute for the Advancement of the American Legal System (IAALS) is a national independent research center that convened 21 different professionals who reviewed states' court systems and released a report as part of a Judicial Discipline Project, with guidelines for states to support the functioning of judicial conduct commissions. IAALS suggests that judicial conduct commissions "should have authority over judicial disability and should follow consistent procedures just as in judicial discipline." Some members of the commission have said that complaints about judicial disability are often the most difficult for JCCs as no one wants to sit in judgment of their peers.

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### **CONCLUSION**

*Our review of all other states found the JSC is similar in constitutional and statutory creation, how members are appointed, and the type of members that make up the commission. Montana's single-tiered system mirrors most other state review systems and is functional within the state's judicial structure. While every state's judicial system and JCC are structured slightly differently, Montana's commission and process for reviewing and adjudicating judicial ethics complaints fall broadly in the mainstream and can be relied upon as an appropriate check on the state's judiciary.*

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## **Analysis of Montana Judicial Complaints**

The second half of this chapter presents a limited comparison of other states' complaint statistics to Montana's and provides our general demographic observations from JSC complaint files. To determine how the JSC's dismissal rate compares to other JCCs, we reviewed all complaints filed from 2012 to 2022. This examination allowed us to analyze the state's number and types of judges and complainants, judges' jurisdictions, days to complaint resolutions, types of alleged rule violations, and annual dismissal rates.

### **Nationally, JCCs Dismiss Most Complaints for Similar Reasons**

The National Center on State Courts (NCSC) is the leading authority on emerging issues and trends in state and international court administration. According to the NCSC, the vast majority of complaints filed with JCCs are dismissed due to lack of jurisdiction, because the complainant's court cases could be appealed, or because litigants were simply disappointed in the outcome of their case. In Montana, some litigants filed complaints that concerned the actions of their attorney, which should instead be filed with the Montana Office of Disciplinary Counsel, the JSC equivalent for grievances against lawyers. Other complaints indicated the litigant disagreed with the judge's ruling or believed the judge made a legal error; in these cases, it is more appropriate for the litigant to appeal to a higher court. Litigants who lost their court cases also file complaints because they believe the JSC can overturn the judge's decision, an action that conduct commissions cannot take.

### **No Consistent Standard for Reporting Data is Required**

National guidelines recommend that JCCs issue annual reports to educate the judiciary and the public on judicial ethics. Reports should include the purpose and function of the JCC, how to file a complaint, any changes to procedural rules or code, basic statistics, including private sanctions issued, and a general discussion of cases resulting in discipline during the year, all without revealing judges' names. Most annual reports will likely give statistical data and breakdowns for each state's number and type of judges who are the subject of complaints, judges' jurisdictions, categories of complainants, etc.

We found that JCC annual reports varied widely in size and scope. For example, in their reports, some states only listed the number of complaints, type, and number of judges involved, as well as private or public discipline. Other states' reports included a history of the commission, information about judges and complainants, a breakdown of courts and locations, budget information, alleged ethical violations, previous years' data, and more. States' inconsistent reporting methods limited our comparative analysis of JCC complaint data to the JSC.

We reviewed available annual reports for each state from 2020 to 2022 to determine the number of complaints each commission received by year, the number disposed of (dismissed or adjudicated), the number of investigations, and the number of corrective actions. We considered all communication from a commission to a respondent judge as a form of corrective action, even if a state did not consider it as such. We calculated an average dismissal rate over the three-year period for those states that had available data.

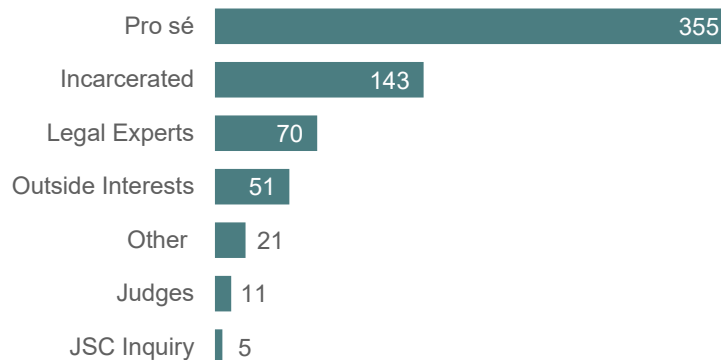
We include our comparison of each state's JCC structure, membership, and disciplinary authority in the Appendix. The review and analysis of JSC complaints and dispositions is included in the following sections.

## Most Complainants Represented Themselves Before a Judge

We classified the complainant type according to the information available within the complaint. Litigants that appeared to represent themselves were classified as pro sé and made up 61 percent of the 485 complainants. Incarcerated complainants accounted for approximately 17 percent of the total. Legal professionals who filed complaints were primarily attorneys, including public defenders. Complainants identified as Outside Interests included those who filed from out-of-state and those involved in professions other than legal experts or public servants. Only 11 complaints were filed by judges and the JSC initiated five inquiries without a complaint. The remaining complainant types could not be determined from the complaint form and were identified as Other. We selected what appeared to be the best fit even though a complainant could be represented in more than one category. Of the total complainants, 401 people filed a single complaint. 84 complainants filed complaints more than once for a total of 255 complaints.

Figure 3  
**Complainants by Type**

Pro se complainants were the most common, followed by incarcerated complainants.



Source: Compiled by the Legislative Audit Division.

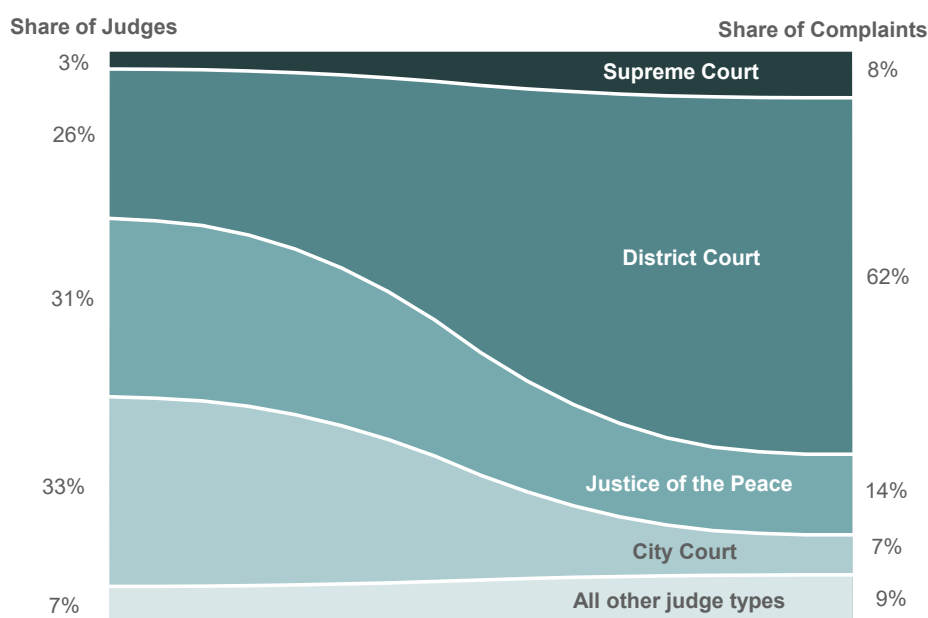
## District Court Judges Received More Complaints Relative to Other Types of Judges Between 2012 and 2022

Figure 4 compares each judge type in Montana to the percentage of complaints each judge type received. The percentage of judges on the left side of the figure is the approximate percentage of judicial positions in Montana at the end of 2022. While about 26 percent of all Montana judges are district court judges, 62 percent of the complaints were about district court judges. State judicial districts can cover multiple counties with large geographic areas. These judges have heavy caseloads concerning felonies, incarcerated individuals, and family law (divorce, child custody, adoption, and child welfare). They also hear cases of appeal from lower courts and cases where the State of Montana is sued. These factors may contribute to district court judges receiving a disproportionate number of complaints. Analysis of caseload statistics could shed further light on the distribution of complaints, but such information is not readily available at every court level in the state.

Figure 4

### District Court Judges Received the Most Complaints

Between 2012 and 2022, district court judges received a disproportionate number of complaints compared to other types of judges.



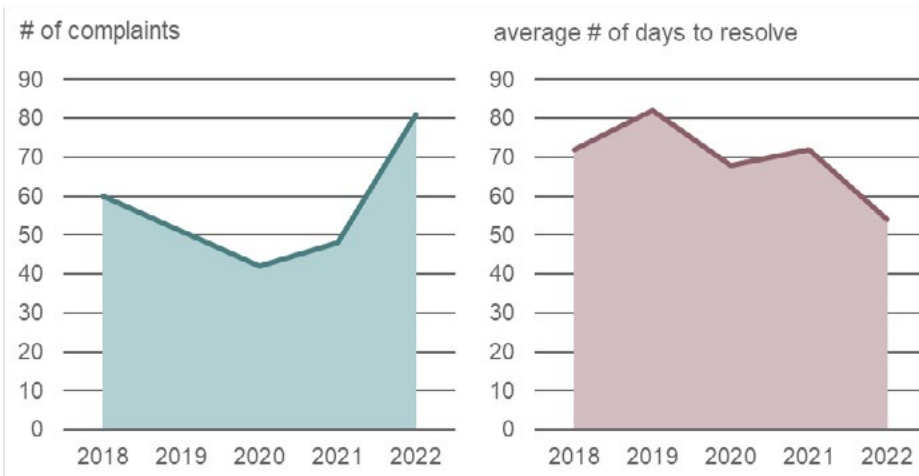
Source: Compiled by the Legislative Audit Division.

## JSC has Been Consistent in Days Taken to Resolve Complaints Over Time

Over the audited review period, it took an average of 69 days for the JSC to complete its review process, from receiving the complaint to dismissal or disciplinary action. The commission has had increasing numbers of complaints since 2020, but it did not appear to cause an increase in review days as shown in Figure 5 (page 12). Some commission members speculated that a recent increase is largely due to campaign activity and partisan issues.

Figure 5  
**Average Days to Resolve 2018-2022**

Between 2018 and 2022, the **number of complaints** dipped and then spiked in 2022, but the JSC is taking less **time to resolve complaints**, on average.



Source: Compiled by the Legislative Audit Division.

## The Top-10 Alleged Rule Violations Accounted for 97% of Complaints

The Montana Code of Judicial Conduct (code) includes four main standards known as “canons,” each containing specific principles called “rules.” Rules apply to the personal and professional decisions of the judge or judicial candidate in court and personal matters pertaining to the court. The rules are binding and enforceable, although a couple of JSC members have found the language ambiguous. The JSC has the authority to use discretion in the reasonable application of the code’s rules.

We examined the types of violations that were filed with the JSC to see what complainants were concerned about regarding judicial ethics. We classified each complaint by choosing the most relevant rule that applied to the complaint, even if the complainant thought the judge violated a different rule or listed multiple rule violations. Of the 656 complaints filed, 639 were within the top 10 rule violations, totaling 97 percent overall. The top 10 alleged ethical violations (639 of 656) were largely focused on the rules concerning impartiality and bias, as shown to the right.

Figure 6  
**Top 10 Alleged Rule Violations 2012-2022**

Rules regarding impartiality and bias were most commonly cited in the top 10 rule violations in complaints against judges.



Source: Compiled by the Legislative Audit Division.

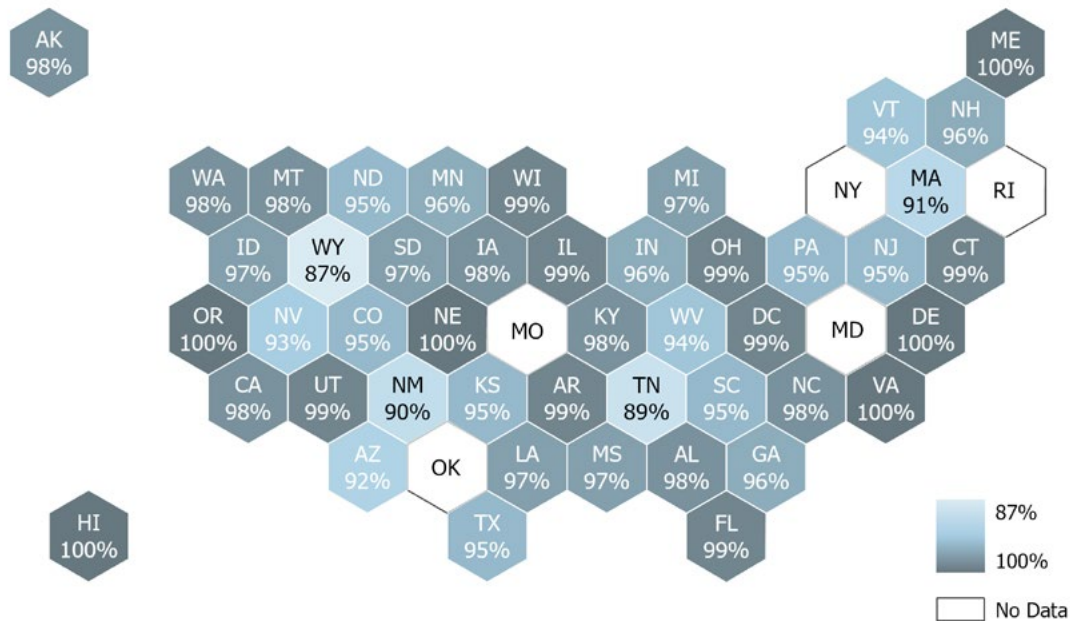


## JSC Average Dismissal Rate for Recent Three-Year Period was 98%

Montana’s JSC overall average dismissal rate as reported from 2020-2022 was 98 percent. For the entire audited period of 11 years, we determined the reported dismissal rate averaged 96 percent. Among all states that reported, the average dismissal rate was 96 percent over the three-year period (five states did not have data). The Wyoming Commission on Judicial Conduct and Ethics had the lowest dismissal rate at 87 percent, although the commission had some of the lowest number of complaints filed each year. Delaware, Hawaii, Nebraska, and Oregon did not issue any corrective action during the three years with a reported 100 percent dismissal rate.

Figure 7  
**States’ Average Complaint Dismissal Rates 2020-2022**

Montana's complaint dismissal rate is similar to that of most other states.



Source: Compiled by the Legislative Audit Division.

### Summary

Our analysis of judicial complaints in Montana indicates that complainants are most often those who represent themselves before a judge and are concerned about judicial impartiality and bias. District court judges received the most complaints over the audited period. Because all states track and record complaints and dismissals differently, comparisons to Montana are challenging. However, our review indicated the most common reasons for dismissals in Montana mirror those found nationally, and the JSC’s average dismissal rate is not out of line compared to other JCCs.



# Chapter III – Improved Procedural Practices Would Standardize Review and Investigation Processes

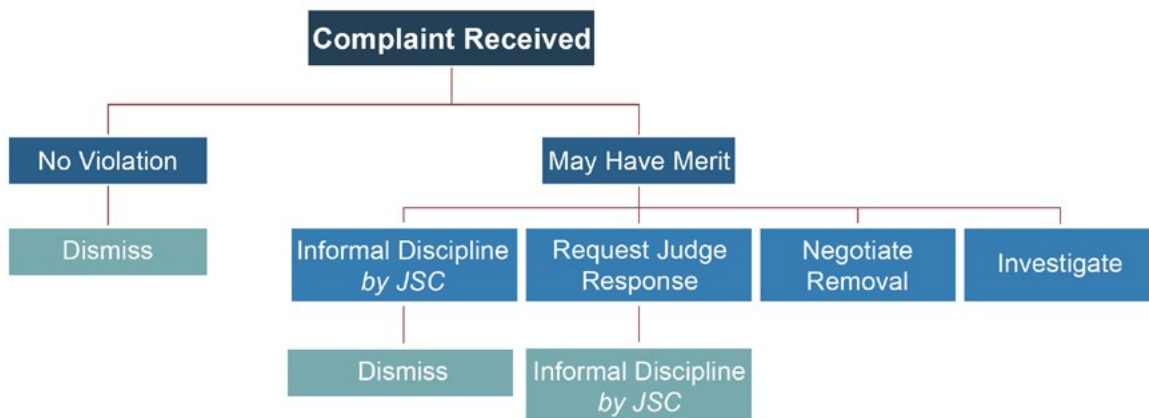
## Introduction

Our second objective involved an examination of the JSC’s complaint review process to determine if the commission is consistent in its practices and follows national standards. To operate effectively, the JSC can create its own rules, similar to policies used by other state boards and commissions. Last updated in 2015, the JSC rules govern the commission’s functions and disciplinary actions against judges. Due to statutory changes in 2021 and 2023 affecting appointments and confidentiality, the JSC rules need updating, which the commission acknowledges. We found that adopting best practices, clarifying complaint review and investigation processes, enhancing member training, and expanding sanction options could improve the JSC’s ability to hold judges accountable and maintain public trust.

## **JSC Initial Complaint Review Process Has Four Outcomes**

The JSC may summarily dismiss complaints after the initial review for lack of jurisdiction or appellate issues or at any other point within the review process if there is insufficient evidence of an ethical violation. If the complaint is straightforward, supported by evidence, and the commission believes the Code of Conduct has been violated, the JSC can issue informal corrective action for minor ethical violations. If the evidence is insufficient but the JSC believes there is possible merit, it may ask the judge to respond and, based on the response, may choose from four options: dismiss for no finding of an ethical violation, issue informal corrective action, negotiate a resignation or retirement with the respondent judge, or agree to conduct an investigation. See below for a visualization of the initial review process.

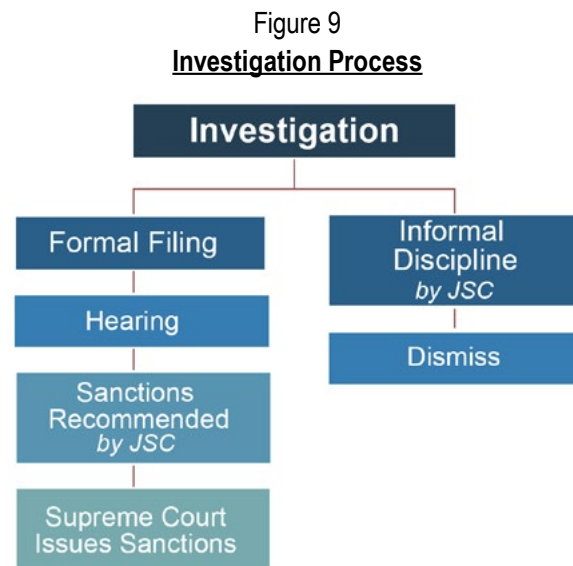
Figure 8  
**Initial Complaint Review Process**



Source: Compiled by the Legislative Audit Division.

## JSC Complaints with Merit May Be Investigated

An investigator may be hired if the commission agrees there is potential misconduct but needs more evidence. After the investigation and finding of ethical misconduct, the commission decides if the violation merits informal corrective action or a recommendation for formal discipline by the Supreme Court. If the JSC decides a recommendation for formal discipline is necessary, the judge can either accept the discipline or pursue formal proceedings by requesting a hearing. The JSC hires legal counsel to represent the commission, the judge is represented by their attorney during the hearing, and both sides present evidence for or against violating the code. If the evidence shows the judge committed misconduct, the Supreme Court will consider the commission's recommendation for discipline. The Supreme Court can adopt the recommendation, decide upon another disciplinary alternative, or reject the recommendation. Figure 8 illustrates the investigative process.



Source: Compiled by the Legislative Audit Division.

Complaints and decisions by JCCs are subjective. The commission has discretion on its decisions and may withhold corrective action on minor complaints even if it appears a judge has violated the code of conduct. JSC decisions on the disposition of complaints are final and cannot be appealed, although some states allow an appellate review. The JSC has described most of the complaint process in online materials, but we found that some parts of the process could be confusing. Although it rarely occurred, there were times when the commission was not sure of the next steps in the process beyond an investigation. The JSC's development of a process flowchart could better inform potential or new members, other judges, and the public.

## JSC Investigations Lack Consistent Structure and Documentation

JSC rules state the commission “may conduct an investigation into the conduct or condition of the judge for the purpose of determining whether formal proceedings should be instituted, and a hearing held.” Some JSC meetings indicated commission members had an interest in engaging an investigator for several complaints. Still, the complaint files lacked investigative reports or invoices for contracting, leaving it unclear if and how any or all of these complaints resulted in an investigation. We could ascertain approximately 18 investigations occurred.

Some JSC investigations during the audit period tended to be more informal, and at times, the commission did not receive any kind of report documenting the investigation outcome. In more serious situations, reports were found with substantial information including court transcripts, depositions, affidavits, and/or copies of court documents that illustrated what the commission found, and how it reached its decision.

With inconsistencies and apparent informalities in how complaints are investigated, there is a risk the JSC will not address all investigations similarly. When the Montana Office of Disciplinary Counsel was created by Supreme Court order for attorneys, the rules included language requiring “the Discipline Counsel shall investigate complaints... and present written reports of investigation and appear before the Commission to orally supplement reports of investigation.” The JSC should establish similar expectations of investigations.

## **JSC Decision-Making Factors are Unclear**

During the complaint review, we observed some JSC members express frustration with the lack of guidance in how the commission makes decisions. The code provides some guidance for deliberation of grounds for discipline, including the seriousness of the transgression, the facts, and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others. However, the rules do not guide JSC members on how these factors are weighed and used in determining disciplinary action. It is unclear how the group makes decisions, such as when to request a response from a judge or to conduct an investigation, and there is no clear method to determine when an alleged violation should be treated with corrective action. However, the rules do allow for some discretion.

## **Judicial Survey Indicates Overall Satisfaction with JSC But Some Improvements are Needed**

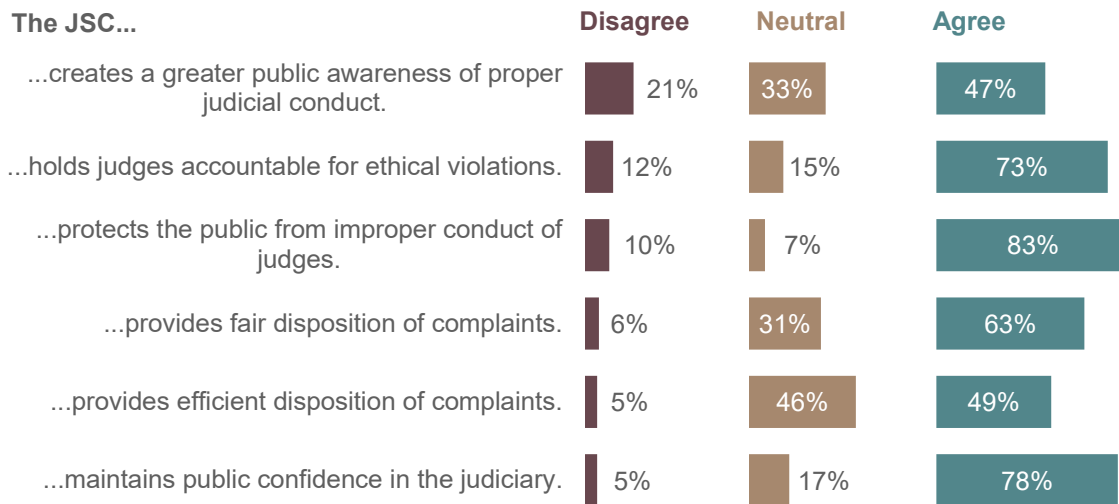
In January 2024, we conducted an anonymous survey to 165 Montana judges. Survey questions involved JSC efficiency and fairness in the process, judicial ethics training, whether judges had filed a judicial ethics complaint or had a complaint filed against them, and what that experience was like. We also wanted to know how long they had been judges, their current judicial title, and if they had a law degree. We received 116 responses, a response rate of 70 percent. Seventy percent of the total responses were evenly split between district court and justice court judges. Most respondents had been on the bench between 5 and 15 years, and half reported having a law degree. Very few judges claimed to have filed a complaint against another judge, and fewer than 25 knew of a complaint filed against them.

We asked judges about their level of agreement with statements regarding their perception of the commission and its work. Judges had greater concerns about whether the JSC creates greater awareness of proper judicial conduct or provides efficient disposition of complaints versus perceiving the JSC as fair and efficient. See Figure 10 (page 20).

Figure 10

**Judicial Survey Results from Judicial Standards Commission Purpose and Duties**

There was less agreement amongst judges that the JSC creates a greater public awareness of proper judicial conduct or provides efficient disposition of complaints.



Source: Compiled by the Legislative Audit Division.

We asked judges why they may not find the JSC is efficient and fair in handling complaints and received 42 written responses. The overall themes from these responses included:

- Awareness of JSC: One-third of respondents stated that they have little to no knowledge or personal experience with the JSC, making it challenging for them to provide answers to some survey questions.
- Efficiency: Some respondents expressed concerns about the efficiency of the JSC, citing delays in responses and slow investigations.
- Issues of Accountability: Several respondents indicated the JSC does not appear to hold other judges accountable for ethical violations.
- Confidentiality: Some respondents mentioned that they assume the process is fair but could not be certain because of the confidential nature of the JSC's processes.
- Concerns About Bias: Some respondents felt the JSC may not be completely impartial.
- Transparency: Some respondents said that the results of decisions and the reasons behind them should be made more widely available to the public.
- Suggestions for Improvement: Some respondents suggested the JSC needs clearer rules and better direction.

## Other States Provide More Structure for the Complaint Process

We found other states have extensive guidance in procedural rules, including steps for receiving complaints and screening them for merit, responding to complainants, beginning preliminary inquiries, managing investigations, and measures for commission voting, among other standard procedures similarly used by the JSC. In particular, the Idaho Judicial Council has documented procedures for the complaint review process, including initial inquiry and evaluating the nature and extent of alleged judicial misconduct.

Montana's procedures appear to lack clarity in the complaint review process, and JSC members could benefit from more authoritative guidance. Specifically, a more defined approach to complaint review and decision points for investigations would help ensure consistent and equitable treatment of judicial ethics complaints.

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### **RECOMMENDATION #1**

*We recommend the Judicial Standards Commission develop and implement more prescriptive written procedures including, but not limited to, typical judicial conduct commission processes such as complaint receipt and review, requirements for investigations and written documentation of the results, and decision paths for communication with complainants, dismissal, and discipline.*

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## Expanded Sanction Options and Authority Could Address Escalating Patterns of Misbehavior

The IAALS recommends that judicial conduct commissions “develop standards for discerning what sanctions to impose and relevant factors for the sanction decision, including the extent of misconduct, the judge’s culpability, judge’s response to the commission, and the judge’s record.” Currently, it is unclear whether or how the JSC uses these considerations as factors to determine sanctions. When the JSC decides a complaint has merit, it must decide upon a corrective action that appropriately addresses the ethical violation. According to the JSC rules, the commission can issue two informal corrective actions for minor ethical violations:

1. *Admonition*: A private communication from the commission to a judge reminding the judge of ethical responsibilities and giving a warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.
2. *Private Reprimand*: A private communication from the commission to a judge that declares the judge’s conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.

If the JSC finds a judge has committed more serious misconduct, the JSC Rules require the commission to recommend one of the following sanctions to the Supreme Court:

3. *Public Reprimand*: A public reprimand administered by the Supreme Court, upon report and recommendation of the commission, which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.
4. *Censure*: A public declaration by the Supreme Court that a judge is guilty of misconduct that does not require suspension or removal from office. Censure may be ordered in conjunction with other sanctions.
5. *Suspension*: A decision by the Supreme Court to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.
6. *Removal*: A decision by the Supreme Court to remove a judge from office for serious misconduct.
7. *Permanent Removal*: A decision by the Supreme Court to remove a judge permanently from office for serious misconduct and declares that such person may never again hold a judicial office in the State of Montana.
8. *Retirement*: A decision by the Supreme Court to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

The court may accept the JSC's recommendation, adjust the recommended discipline, or dismiss the complaint entirely. Of complaints resolved from 2018-2022, the JSC made three recommendations for formal discipline resulting in the following Montana Supreme Court orders: one stipulation for public admonishment, one 30-day suspension without pay, and one public reprimand. Two other complaints from that time period ultimately received Supreme Court sanctions but were not resolved by the end of 2022 when our review period closed.

## Ability to Issue Sanctions Differs Among JCCs

Corrective action often depends on statutory authority or a commission's procedural rules. JCC sanction authority varies: eight states' commissions do not have the authority to issue sanctions - that authority exists only at the highest court levels and upon the recommendation of the JCCs. The ultimate sanction is for a judge to be permanently removed from the bench. This is often a penalty issued by the state Supreme Court for the most egregious ethical violations. However, Maine, Massachusetts, Tennessee, Vermont, and West Virginia are among the states where only the legislature can remove a judge for misconduct. Some commissions have the authority to issue both informal and formal discipline. Others, like Montana, may only issue informal discipline and then recommend formal disciplinary action to the Supreme Court.

## Other States Have More Options for Informal Sanctions

JCCs across the nation utilize a variety of informal dispositions such as private verbal or written warnings or cautions, private reprimands, and remedial actions such as writing an apology or participating in additional education, counseling, or mentoring. A commission may monitor a judge throughout the mentoring process or agree to defer a stronger corrective action if the judge takes ethics training or exhibits sincere regret.



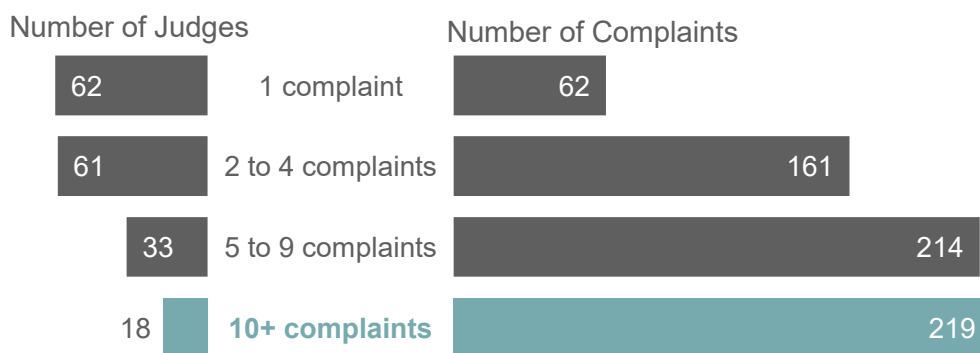
Arizona’s Commission on Judicial Conduct issues professional counseling, judicial education, and mentoring among its informal sanctions. Nevada’s Commission on Judicial Discipline has several options, including requiring a judge to write a public or private apology, issuing a probationary period under conditions deemed appropriate by the commission, providing a remedial course of action, education and training in judicial ethics, and possible fines. However, the JSC is uncertain about its ability to issue other informal discipline because its Rules only include options for letters of admonition and reprimand.

## Some Judges Receiving Multiple Complaints Do Not Appear to Receive Significant Corrective Action

The number of judges who were alleged to have violated the Montana Code of Judicial Conduct totaled 174 from 2012-2022. Many judges received multiple complaints over the entire period, including 51 judges who received five or more and 18 judges who received 10 or more. The figure below shows these 18 judges accounted for 33 percent of the complaints filed. Of the 51 judges receiving five or more complaints, seven were asked to resign from the bench, avoiding formal filings with the court. Although a number of these judges negotiated their resignations or retirements with the commission as a result of ethical violations, there is an appearance that the JSC is not addressing patterns of poor judicial conduct before receiving an escalating number of complaints about a judge.

Figure 11  
**Judges Receive Multiple Complaints**

While a small number of judges received **10 or more complaints**, their complaints accounted for about a third of all complaints against judges between 2012 and 2022.



Source: Compiled by the Legislative Audit Division.

Over time, JSC members have expressed concern that the JSC rules prevent greater authority to issue other types of discipline. We observed complaints where some violations were not addressed because they “do not rise to the level of misconduct” but members felt they were still worthy of communication with the judge. Judges receiving multiple complaints of continued or escalating poor behavior within a matter of months also caused concern for commission members, yet most complaints were dismissed. When JSC members express significant concerns about complaints filed against a judge, issuing cautionary communication to respondent judges allows members to feel their concerns are taken seriously.

## **JSC Reports 99% of Complaints Regarding Judges Who Receive More than One Complaint Are Dismissed**

In the 2021/2022 *Biennial JSC Report to the Legislature*, we determined that judges who received multiple complaints accounted for 69 percent of the 129 total complaints. Five of these judges received five or more complaints. Ninety-one percent of the complaints were categorized as dismissed (not including 14 pending decisions at the end of 2022). Such high dismissal rates, particularly when such a large percentage are multiple complaints against judges, may give the appearance that the JSC does not hold judges accountable. We noted that the commission found many complaints were frivolous or the judge's actions were not ethical violations. Even if the commission issued informal corrective actions to some of these judges by listing the dispositions as dismissed, the appearance is that the JSC does not look at the overall pattern of multiple incidents alleging misbehavior as part of its consideration for disposition.

Multiple complaints against a single judge are a concern of the Illinois Judicial Inquiry Board because a “complaint of a single instance of alleged judicial impropriety, standing alone, may not be sufficient to publicly charge a judge before the Courts Commission, but subsequent complaints against the same judge may ultimately call for Board action. The availability of such a mechanism to the public for the expression of grievances is a very real, though intangible, benefit.”

## **Judicial Integrity is At Risk If Ethically Compromised Judges Stay on the Bench**

There are instances when a judge presiding over the court may be ethically compromised, potentially causing harm to litigants and their families, or have a disabling condition, leaving litigants in jeopardy of continued misconduct or mistreatment. If the JSC conducts an extensive investigation or takes the complaint through to a formal filing process and needs to remove the judge, even temporarily, the option for an emergency interim suspension is not available. The rules allow only interim disqualification upon formal recommendation to the Supreme Court for the removal or retirement of a judge. Commission members shared that it would benefit from the authority to suspend a judge when there are exigent circumstances or there is an emergency during the informal and investigative phases of a complaint to protect the public and the public's trust.

## **All Disciplinary Options Used by the JSC Should be Included in Procedural Rules**

The IAALS recommends “*states without a clearly and publicly articulated range of sanctions should adopt them, along with standards for their application. . . if there's no articulated standards, no one can walk away with any sense of fairness.*” In earlier years of the audited time period, we observed that the commission issued corrective actions not listed in the JSC Rules, including advisory letters and letters of caution and warning; some violations were resolved with informal conversations with judges or by asking the investigator to communicate the commission's concerns. Inconsistent application of disciplinary measures may confuse judges who are looking to the JSC Rules for guidance on possible resolutions. If these are all actions the commission would like to continue issuing for less serious misconduct, the JSC should formally document them in its rules. Some violations were considered “*de minimis*” (too small to be meaningful or considered) and dismissed. The JSC also dismissed several “*pending Rule change.*”

The commission should decide whether certain infractions will or will not warrant corrective actions and consistently apply them. Documenting minor technical violations that the commission will use discretion on increases transparency for all judges. Publishing these decisions will also inform the public and may divert unnecessary complaints.

## **Commission Can Amend Procedural Rules to Expand Corrective Actions**

Having additional sanction options in the JSC rules would better fit minor violations that, in the commission's view, do not rise to the level of serious misconduct but should not be dismissed. The commission believes its authority is limited by procedural rules. We believe the commission can propose revisions and clarifications of the rules for approval by order of the Montana Supreme Court.

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### **RECOMMENDATION #2**

*We recommend the Judicial Standards Commission amend the JSC Procedural Rules to include multiple options for informal corrective action when minor violations are identified and to allow the commission to act quickly when circumstances merit.*

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## **Commission Members Need Training to be Successful**

Best practices and national guidelines for JCCs recommend that new members of a JCC should understand the judicial complaint process and the state's judicial system when they begin serving on the commission. According to an IAALS report, "Judicial conduct commission members need training, guidance, and rules. States should provide members and new staff with judicial ethics and (at least for the public members) judicial process training."

## **JSC Does Not Have Training Requirements or Offer Formalized Training**

The Center for Judicial Ethics (CJE), part of the National Center for State Courts, is a clearinghouse for information about judicial ethics and discipline. The CJE provides resources, training, and information to almost all state judicial conduct organizations. New JSC members in Montana receive the *Handbook for Members of Judicial Conduct Commissions*, written in 2000 and issued by the CJE, a copy of the *Montana Code of Judicial Conduct*, and the *Procedural Rules of the JSC*. The handbook contains two sections: *Ethical Standards for Judges* and *How Judicial Conduct Commissions Work*. The handbook, although dated, does cover best practices, but it is up to commission members to digest the information on their own time. Training for JSC members is not a requirement in statute or in procedural rules, and commission members told us that upon appointment, no training beyond the above literature was provided. New member training is often standard practice for most professional boards and commissions in Montana and in some states for JCCs.

## **New Members Learn Through Experience Rather Than Structured Training Opportunities**

Historically, new JSC members learn the process as they go. Some members mentioned that being appointed to the committee brings a steep learning curve as there are many legal concepts and practices that new layperson members may not have experience with. Even attorney members may consider complaints about cases not within their area of practice. Members told us they would find it helpful to have training that covers the extent of commission oversight and available resources, defines legal processes, and explains the judicial system. These topics of interest indicate that even seasoned members would benefit from periodic dedicated training to ensure that all members understand their duties, review procedural rules and protocols, address changes to the code and statute, and identify all available or necessary resources for the commission.

The CJE offers a biennial National College on Judicial Conduct and Ethics. Topics during one biennial training event included *Best Practices in Judicial Ethics and Discipline*, *Determining the Appropriate Sanction*, *Introduction to Judicial Ethics and Discipline for New Members*, and *The Role of Public Members on Judicial Conduct Commissions*, among other sessions. National conferences and online training opportunities would help all commission members better understand their roles and responsibilities in addressing judicial ethics complaints.

## **Judges Support Ethics Training as Part of Annual Continuing Legal Education**

Montana judges are required to attain a minimum of 15 hours of continuing judicial education per year. As part of the judicial survey, we asked about the efficiency and effectiveness of judicial training. Eighty-three percent of responding judges indicated that judicial ethics training provides sufficient guidance to recognize judicial misconduct, demonstrating that in-person training on judicial ethics is largely effective.

## **Enhanced Training Would Benefit All JSC Members**

JSC members should receive structured and current training to improve their understanding of duties and responsibilities while serving on the commission. The current provision of literature is helpful, but mandatory and ongoing training would help ensure more knowledgeable and effective members.

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### **RECOMMENDATION #3**

*We recommend the Judicial Standards Commission develop and implement a training plan requiring new member orientation and regular review of the state judicial system, legal terminology, complaint review and investigation processes, decision and disciplinary factors, and all other relevant aspects of the commission's duties.*

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## Chapter IV – Enhancing Independence and Transparency

### **Introduction**

Every part of the judicial ethics complaint review process in Montana is confidential, as required by the constitution and JSC procedural rules. Each state addresses confidentiality in much the same way, but there is variety as to when confidentiality ceases in formal judicial discipline proceedings.

To protect the public from judicial misconduct and uphold trust in the judiciary, the JSC must ensure confidentiality, maintain independence from the Montana Judicial Branch, legislature, and public, and improve its practices. The audit found that the JSC could enhance its response to issues of partiality and impropriety with better investigation practices, fiscal independence to avoid conflicts of interest, and increased transparency.

### **Best Practices Indicate Investigators Should Be Independent of Judicial Branch**

The IAALS recommends that “the investigator on staff should have enough independence from the person in the complaint being investigated to make full and fair investigations, reducing conflicts of interest and perceived impropriety.” Fieldwork indicated that state JCCs have multiple options for engaging independent parties to investigate judicial misconduct:

- having dedicated personnel on staff to conduct investigations.
- utilizing the state’s attorneys.
- contracting with external investigators of varying professional backgrounds.

Louisiana’s Judiciary Commission has three different offices, including the Office of Special Counsel, to conduct inquiries and investigations. Maryland has investigative counsel, and New York and California also have staff who conduct investigations. The Iowa Judicial Qualifications Commission will forward a complaint to the Iowa Attorney General’s Office, which can involve the Department of Criminal Investigation in the investigation. In Montana, the Office of Disciplinary Council has had investigators with prior law enforcement experience on staff, providing independence when investigating attorneys.

Our file review suggested the JSC does not initiate enough investigations to warrant a full-time staff investigator. Currently, the commission and court administrator collaborate ad hoc to select investigators, often based on convenience and availability. If the investigation’s focus requires specialized knowledge for the complaint (i.e., human resources), a private attorney with experience in that field may be selected. Otherwise, the JSC and court administrator typically choose based on the location of the respondent judge and where the alleged violation occurred. During the audit period, the court administrator and commission often selected retired judges as investigators. This may seem advantageous because of a judge’s in-depth knowledge of the code and rules, the court system, and appropriate court conduct.

During our review of complaint files, we found insufficient documentation of some investigations. Some files had no record of any type of inquiry by either a member of the commission or an external investigator, although meeting recordings indicated otherwise. This made it difficult to determine the exact number of investigations the commission conducted. Of the approximately 18 complaints we could determine were investigated, one investigator/retired judge conducted almost half. Retired judges investigating their peers may have issues of independence in fact or appearance. Investigator-judges may also share professional or personal connections with the respondent-judge or have knowledge of a judge's court practices that may hinder an objective investigative approach. Some commission members expressed concern about the potential lack of independence of retired judges hired to investigate complaints. Additionally, some judges who responded to our judicial survey wrote about experiencing bias during investigations against them.

## **Independent Investigators Are Best Option for JSC Investigations**

The JSC receives relatively few complaints requiring an investigation and has never identified a need for a staff investigator position. Nonetheless, it is imperative that the process of selecting an investigator follows best practices for expertise, fairness, and independence. Using investigative experts outside of the judicial branch will increase independence in the investigation process. Annual costs for contracting or retaining external investigative services will vary based on the numbers of investigations the commission initiates. Amending the commission's rules to specify how investigators are identified would help standardize the process for future commissions.

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### ***RECOMMENDATION #4***

*We recommend the Judicial Standards Commission establish processes regarding investigations to identify and retain one or more persons with investigative experience and suitable independence from judges under investigation.*

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## **Budget Allocation and Funding Authority Would Ensure JSC Aligns with Best Practices**

The Model Rules for Judicial Disciplinary Enforcement, created by the American Bar Association, recommends the legislature fund JCCs and that commissions prepare their own budgets "to assure the commission's fiscal and operational independence." The ABA adds that a separate budget ensures an independent and adequately funded judicial discipline system, protecting the judiciary against the perception that it is withholding funds and hampering investigations. The JSC Rules refer to "funds provided for the operation of the Commission" and "funds allocated by the office of the Supreme Court Administrator to the Commission." Neither the JSC chair nor the court administrator were aware of such funding and said the JSC does not have its own budget.

Most state JCCs have dedicated staff and funding for commissions, ranging from executive directors to commission secretaries, investigators, legal counsel, and prosecution staff. The JSC is supported by 0.3 full-time staff from the Court Administrator's Office (CAO), who performs administrative duties. During the 2013 session, the legislature allocated general one-time-only funds of \$25,000 to the JSC.

When the JSC did not utilize the funding, the money went back to the general fund, and there were no subsequent direct allocations from the legislature. The JSC has not requested funding from the legislature since then.

## JSC Relies on CAO For Resources

With few investigations per year, it is impractical to have a line item for an investigator on staff or to employ a staff attorney representing the JSC for formal complaint processes. Funding requests can vary from year to year, depending on the complexity and number of complaints, and the CAO indicates they have never failed to fund a requested investigation. Currently, when an investigation is needed, the JSC chair and court administrator discuss options for investigators, and the chair requests funding for the investigation. Retired judges are less costly than attorneys, as a retired judge acting as an investigator is paid through the state's payroll at the statutory retired judge rate of approximately \$65/hour. Attorneys, in contrast, cost about \$225/hour.

## Inadequate Funding Could Threaten Thorough Investigations

CAO staff have said they have no authority to deny the JSC funding and indicated that if needed, a legislative request for supplemental funding would be made, as occurred in 2008 when the JSC asked for additional funds for a complex investigation. However, there is potential that if the CAO could not provide sufficient funding or the legislature denied supplemental funding, investigations could be incomplete or left undone, meaning judges may not be held fully accountable for misconduct. Budgetary limitations should not constrict the possibility of a full, independent investigation of complaints.

*“Budgetary limitations should not constrict the possibility of a full, independent investigation of complaints.”*

- Legislative Audit Division

## Budgetary Discretion Could Increase JSC Independence From Judicial Branch

Without the JSC's discretion over its budget, there is also the threat of perceived independence issues between the commission and the judicial branch and increased potential for the public to believe investigations are influenced outside the JSC. When the JSC depends on the CAO to select and authorize investigators, there are questions of independence between the body regulating judges and the judicial branch. The risk increases if the commission determines it should investigate a Supreme Court justice. Allocated funding and discretion of funding separate from the CAO's budget would help ensure the JSC functions independently of the judicial branch and the Supreme Court. The benefit of a dedicated JSC budget could result in greater investigative reach and increased disciplinary actions.

**RECOMMENDATION #5**

*We recommend the Judicial Standards Commission establish a budgetary line item and authority for the commission's operations.*

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## **Improved Transparency by JSC Will Increase Public Confidence in the Judiciary**

The Montana Constitution requires the JSC to maintain confidentiality in its proceedings, except as provided by statute. The Rules state that all complaint papers and all proceedings while pending before the commission are confidential. When the commission dismisses a complaint, it is no longer confidential, and a complainant may disclose both the complaint and the commission's response. If an investigation results in formal proceedings, the complaint loses its confidential character and becomes public information. Over time, the JSC has maintained strict confidentiality to a greater extent than some states. The commission has historically provided limited information about complaints in its required reports to the legislature.

We found that recent statutory changes (discussed below) will improve the transparency of the complaint process but will make the JSC an outlier among all other states in the amount of information provided about judges. We also found that the JSC can increase transparency for complainants and, by doing so, improve the public's confidence in the commission and the judiciary.

### **Complainants Receive Little Information on JSC Decisions**

The JSC communicates with complainants and respondent judges at different points in the review process. Each complainant receives a letter of notice that the complaint was filed with the JSC and will be reviewed. After review, the JSC typically sends a form letter to complainants when it dismisses a complaint for lack of jurisdiction, evidence, or basis for ethical violations or because the case could be appealed and is inappropriate for the JSC. However, the reason for dismissal is generally not provided to the complainant. For informal corrective actions, including private letters of admonition, private letters of reprimand, or negotiated resignation, the complainant receives a dismissal letter without indicating any corrective action was issued by the JSC. This limited information to complainants results in a lack of public trust in the judiciary and perceptions that the JSC does not hold judges accountable.

### **More Transparency Regarding Outcomes Would Better Inform Complainants**

We found that the JSC most often reported complaints that resulted in informal corrective action as "dismissed" in recent legislative reports. We compared each complaint disposition from the file review to the relevant listing in legislative reports for all available years. The commission publicly reported 21 informal corrective actions as dismissed, resulting in its reported 96 percent dismissal rate. However, we found the commission issued, or recommended to the Supreme Court, 46 corrective actions, resulting in a 92 percent dismissal rate.



With new statute requiring more transparent information about complaints, the commission will be required to list all corrective actions, giving the public a more accurate representation of dispositions, and falling more in line with national dismissal rates.

In some cases, we learned of corrective actions only after listening to audio recordings of JSC meetings, as the action was not always noted in the complaint file, and the biennial report indicated these cases were dismissed. We also found instances of complainants asking for additional information about the JSC's decision, wondering if the commission had truly considered the complaint. Some commission members suggest that JSC rules limit the information reported to complainants and the public but believe there is room for improvement. Providing reasoned, individual responses to each complainant may decrease the instances of multiple complaints filed or repeated contacts to the commission for more information.

## **JSC May Negotiate a Judge's Removal Due to Ethical Violations, but Sometimes Reports the Complaint as Dismissed**

Confidentiality is important in judicial discipline – to protect judges and their careers when frivolous allegations of ethical violations are filed against them. However, the opaque nature of JCC proceedings may decrease public faith in the process if there is no transparency in reporting. The JSC has informally and privately negotiated resignations and retirements in cases where the judge has committed ethical violations and wishes to avoid the publicity of a formal filing with the Supreme Court, or when the JSC does not have sufficient evidence but is nonetheless confident that misconduct has occurred. Private removals may save the commission time and money because the complaint is not handled through formal filing and a hearing. However, withholding a judge's name and reason for removal is problematic for the public. They may not know that a judge was removed due to a complaint and may perceive that the JSC does not hold judges accountable.

*“...withholding a judge's name and reason for removal is problematic for the public...”*

- Legislative Audit Division

## **Privacy is Appropriate for Judicial Disability Retirements**

When a judge is ineligible to serve due to severe misconduct, the commission's formal process and recommendation to the Supreme Court for removal allows the public to know that. However, a judicial disability retirement should remain confidential, as a judge's diminishing capacity or capabilities are not necessarily ethical violations. We found that most states do not reveal a judge's name if removal from the bench is due to medical or substance use disabilities. In cases like this, it may be more appropriate to maintain confidentiality to protect the judge's privacy.

## **JSC Reports to Legislature Contain Limited Information**

Prior to 2023, statute required the following components in JSC reports to the legislature: the number of complaints filed in the calendar year, the number that were pending from the previous year, the general nature of each complaint, whether there were previous complaints against the same judge, the current status of all complaints filed with or pending before the commission during the preceding biennium, and when the commission decided on a disposition.

None of the information can reveal the identity of the judge complained against. The reports gave very little useful information to the public or to legislators to help them understand the complaints or how the commission made its disposition decisions.

## **Legislation Recently Passed Removes Confidentiality Limitations in JSC Reports**

During the 2023 session, Senate Bill 313 eliminated the confidentiality of judges against whom complaints have been filed. Amendments to several parts of §3-1-1101 to 3-1-1126, MCA, were made, requiring the JSC to change its reporting practices beginning with the 2025 *JSC Report to the Legislature*. The amended statute now requires more detail in reporting, including the name of the judge, the type of complaint, the issues involved, the basic facts making up the complaint, and how each commission member voted. However, the requirement to reveal a judge's name along with the complaint exceeds transparency requirements in every other state.

## **Models from Other States Provide Increased Transparency in Reporting**

States have found a variety of ways to report improprieties and misconduct by providing a concise description of the complaint and the case's outcome without revealing the judge's name. Several states ensure a judge's confidentiality but still provide transparency to the public in reporting a commission's action. In Arizona, all complaints against judges must be made public, but with varying degrees of disclosure. The Arizona Commission on Judicial Conduct lists every dismissal and disposition on its website. Each published complaint includes a copy of the Commission's order, including those that are dismissed because there's not enough evidence. Informal sanctions listed on the website contain an explanation of the error and the finding but have redacted the names of both complainants and judges.

In contrast, the formal sanctions of the Arizona Supreme Court include the judges' names. Colorado's Commission on Judicial Discipline authorizes the publication of summaries of proceedings that have resulted in disciplinary action without disclosing the date or location of the misconduct or identity of the judge or other parties. The Judiciary Commission of Louisiana lists a description of each corrective action based on a law passed in 2020 that allows them to display actions publicly but does not reveal the judge's name.

During our review of 2017/2018 to 2021/2022 *JSC Report(s) to the Legislature*, we were unable to determine if complaints led to private corrective actions, and we found inconsistencies in the way some complaint dispositions were reported versus actual actions. The commission could identify those complaints resulting in informal corrective action rather than reporting the disposition as dismissed. This would provide clarity to the public and support the public's trust that the JSC is holding judges accountable for minor ethical violations. We also found that judges receiving multiple complaints in a biennium were identified in reports by random numbers as required by the Legislature, but the JSC did not link these same judges to any prior complaints in previous years. This may suggest to the public that some judges do not have a previous history of complaints, whether the JSC found the complaints frivolous or of merit.

## Survey Results Indicate Complainants are Dissatisfied with Complaint Process

We developed a survey for prior complainants to provide feedback about their experiences filing judicial ethics complaints. We identified approximately 275 complainants that filed complaints between 2018 to 2022. We narrowed the distribution list to 170 complainants who received dismissals, did not live out of state, were not in jail or treatment programs, were not homeless, etc. at the time of their complaint.

Approximately 30 percent of the surveys were returned due to incorrect addresses, which is not unexpected given the time frame. We received responses from 40 complainants, with 27 of 34 marking their experience as “very unsatisfied.” Although it is expected that most complainants will be unhappy with the JSC’s decision to dismiss, only four marked their satisfaction with the complaint process as “somewhat” or “very” satisfied.

Thirty-four respondents provided an additional written response to us, with most saying they believed JSC was not fair, impartial, or did not investigate their complaints.

In addition, the judicial survey feedback indicated that some judges believe the JSC could be more transparent by providing information to all judges when reporting corrective action against their peers. Others felt that increased transparency could be educational and allow judges to know if peer judges were guilty of ethical violations.

## JSC Has Opportunities to Improve Transparency While Maintaining Fairness

Improved clarity and increased transparency may provide complainants the confidence that their complaints were properly addressed. More transparency in reporting could result in greater public confidence in the judicial system and public trust in the JSC’s ability to hold judges accountable.

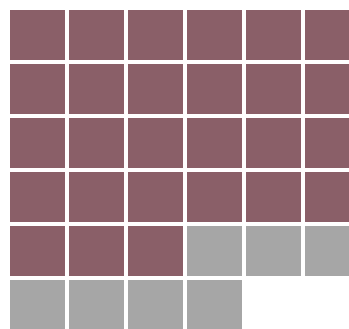
### **RECOMMENDATION #6**

We recommend the Judicial Standards Commission increase transparency by:

- A. Providing an explanation to complainants of factors considered in the JSC’s decisions for dismissals, informal corrective actions, or recommendations for formal sanctions, and
- B. Providing sufficient details of judicial complaints and the JSC’s decisions for dispositions to help the public understand how the JSC holds judges accountable for ethical violations.

Figure 12  
**Complainant Survey**

27 of the 34 complainants who responded to our survey were **dissatisfied** with the complaint process.



Source: Compiled by the Legislative Audit Division.



## Appendix

### Analysis of State Judicial Commissions

We reviewed annual reports, press releases, rules of procedure, guides, websites, and any other available sources of information for each JCC. States report on a variety of data elements, and there are no consistent reporting standards or methods. Not all states report complaint statistics online, and some states do not allow public access to complaint data; for these reasons, we marked some boxes as “Not Available.” This appendix contains three tables that provide comparisons for every state’s judicial conduct commission.

- **Table #1: Structure** provides information about how the commissions were established, the type of review system each has, and whether the commissions have a dedicated budget.
- **Table #2: Composition** contains information about the type and number of members for each commission, which JCCs have designated alternates, and how long members serve for each term.
- **Table #3: Sanction Authority and Average Dismissal Rates** provides the extent of each commission’s disciplinary authority and an average complaint dismissal rate for each JCC over a three-year period, 2020 to 2022.

### Structure

Title of Commission	Establishment Method	Review System	Dedicated Budget
Alabama Judicial Inquiry Commission/ Alabama Court of Judiciary	Constitution	Two Tier	Yes
Alaska Commission on Judicial Conduct	Constitution	Single Tier	Yes
Arizona Commission on Judicial Conduct	Constitution	Two Panel	Yes
Arkansas Judicial Discipline & Disability Commission	Constitution	Single Tier	Yes
California Commission on Judicial Performance	Constitution	Single Tier	Yes
Colorado Commission on Judicial Discipline	Constitution	Single Tier	Yes
Connecticut Judicial Review Council	Constitution	Single Tier	Yes
Delaware Court on the Judiciary	Constitution	Two Tier	Not Available
Florida Judicial Qualifications Commission	Constitution	Two Panel	Yes
Judicial Qualifications Commission of Georgia	Constitution	Two Panel	Yes
Hawaii Commission on Judicial Conduct	Supreme Court	Single Tier	Not Available
Idaho Judicial Council	Statute	Single Tier	Yes
Illinois Courts Commission	Constitution	Two Tier	Yes
Indiana Commission on Judicial Qualifications	Constitution	Single Tier	Not Available
Iowa Judicial Qualifications Commission	Constitution	Single Tier	Not Available

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Title of Commission	Establishment Method	Review System	Dedicated Budget
Kansas Commission on Judicial Conduct	Supreme Court	Two Panel	Not Available
Kentucky Judicial Conduct Commission	Constitution	Single Tier	Not Available
Judiciary Commission of Louisiana	Constitution	Single Tier	Not Available
Maine Committee on Judicial Conduct	Supreme Court	Single Tier	Not Available
Maryland Commission on Judicial Disabilities	Constitution	Single Tier	Yes
Massachusetts Commission on Judicial Conduct	Statute	Single Tier	Yes
Michigan Judicial Tenure Commission	Constitution	Single Tier	Yes
Minnesota Board on Judicial Standards	Statute	Single Tier	Yes
Mississippi Commission on Judicial Performance	Constitution	Single Tier	Yes
Missouri Commission on Retirement, Removal and Discipline	Constitution	Single Tier	Yes
Montana Judicial Standards Commission	Constitution	Single Tier	No
Nebraska Judicial Qualifications Commission	Constitution	Single Tier	Not Available
Nevada Commission on Judicial Discipline	Constitution	Single Tier	Yes
New Hampshire Judicial Conduct Committee	Supreme Court	Single Tier	Yes
New Jersey Advisory Committee on Judicial Conduct	Supreme Court	Single Tier	Yes
New Mexico Judicial Standards Commission	Constitution	Single Tier	Yes
New York State Commission on Judicial Conduct	Constitution	Single Tier	Yes
North Carolina Judicial Standards Commission	Statute	Two Panel	Yes
North Dakota Judicial Conduct Commission	Statute	Single Tier	Yes
Ohio Office of Disciplinary Counsel	Supreme Court	Two Tier	Yes
Oklahoma Council on Judicial Complaints	Statute	Two Tier	Yes
Oregon Commission on Judicial Fitness and Disability	Statute	Single Tier	Yes
Judicial Conduct Board of Pennsylvania	Constitution	Two Tier	Yes
Rhode Island Commission on Judicial Tenure and Discipline	Statute	Single Tier	Yes
South Carolina Commission on Judicial Conduct	Supreme Court	Two Panel	Yes
South Dakota Judicial Qualifications Commission	Constitution	Single Tier	Not Available
Tennessee Board of Judicial Conduct	Statute	Two Panel	Yes
Texas State Commission on Judicial Conduct	Constitution	Single Tier	Yes
Utah Judicial Conduct Commission	Constitution	Single Tier	Yes

Title of Commission	Establishment Method	Review System	Dedicated Budget
Vermont Judicial Conduct Board	Supreme Court	Single Tier	Not Available
Virginia Judicial Inquiry and Review Commission	Constitution	Single Tier	Yes
Washington Commission on Judicial Conduct	Constitution	Single Tier	Yes
West Virginia Judicial Investigation Commission	Supreme Court	Two Tier	Yes
Wisconsin Judicial Commission	Supreme Court	Single Tier	Yes
Wyoming Commission on Judicial Conduct and Ethics	Constitution	Two Panel	Yes
Washington D.C. Commission on Judicial Disabilities and Tenure	Statute	Single Tier	Yes

## Composition

Title of Commission	Judges	Attorneys	Citizens	Total Members	Terms	Alternates
Alabama Judicial Inquiry Commission/ Alabama Court of Judiciary	8	4	6	18	4	
Alaska Commission on Judicial Conduct	3	3	3	9	4	
Arizona Commission on Judicial Conduct	6	2	3	11	6	
Arkansas Judicial Discipline & Disability Commission	3	3	3	9	6	Yes
California Commission on Judicial Performance	3	2	6	11	4	
Colorado Commission on Judicial Discipline	4	2	4	10	4	
Connecticut Judicial Review Council	3	3	6	12	4	Yes
Delaware Court on the Judiciary	7	3	4	14	4	
Florida Judicial Qualifications Commission	6	4	5	15	6	
Judicial Qualifications Commission of Georgia	3	4	3	10	4	
Hawaii Commission on Judicial Conduct	0	3	4	7	3	
Idaho Judicial Council	2	3	3	8	6	
Illinois Courts Commission	7	3	6	16	4	
Indiana Commission on Judicial Qualifications	1	3	3	7	3	
Iowa Judicial Qualifications Commission	1	2	4	7	6	
Kansas Commission on Judicial Conduct	6	4	4	14	4	
Kentucky Judicial Conduct Commission	3	1	2	6	4	Yes
Judiciary Commission of Louisiana	3	3	3	9	4	

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Title of Commission	Judges	Attorneys	Citizens	Total Members	Terms	Alternates
Maine Committee on Judicial Conduct	3	2	3	8	6	Yes
Maryland Commission on Judicial Disabilities	5	5	8	18	4	
Massachusetts Commission on Judicial Conduct	3	3	3	9	6	
Michigan Judicial Tenure Commission	5	2	2	9	3	
Minnesota Board on Judicial Standards	4	2	4	10	4	
Mississippi Commission on Judicial Performance	4	1	2	7	6	Yes
Missouri Commission on Retirement, Removal and Discipline	2	2	2	6	6	
Montana Judicial Standards Commission	2	1	2	5	4	
Nebraska Judicial Qualifications Commission	4	3	3	10	4	
Nevada Commission on Judicial Discipline	2	2	3	7	6	Yes
New Hampshire Judicial Conduct Committee	4	1	6	11	3	Yes
New Jersey Advisory Committee on Judicial Conduct	3	3	5	11	3	
New Mexico Judicial Standards Commission	4	2	7	13	4 or 5	
New York State Commission on Judicial Conduct	4	3	4	11	4	
North Carolina Judicial Standards Commission	8	2	2	12	6	
North Dakota Judicial Conduct Commission	2	1	4	7	3	
Ohio Office of Disciplinary Counsel	7	17	4	28	3	
Oklahoma Council on Judicial Complaints	16	4	1	21	5	
Oregon Commission on Judicial Fitness and Disability	3	3	3	9	4	
Judicial Conduct Board of Pennsylvania	3	3	6	12	4	
Rhode Island Commission on Judicial Tenure and Discipline	6	5	5	16	3	
South Carolina Commission on Judicial Conduct	14	4	8	26	4	
South Dakota Judicial Qualifications Commission	2	3	2	7	4	
Tennessee Board of Judicial Conduct	8	2	6	16	3	
Texas State Commission on Judicial Conduct	6	2	5	13	6	
Utah Judicial Conduct Commission	2	2	7	11	4	
Vermont Judicial Conduct Board	3	3	3	9	1-3	
Virginia Judicial Inquiry and Review Commission	3	2	2	7	4	
Washington Commission on Judicial Conduct	3	2	6	11	4	Yes



Title of Commission	Judges	Attorneys	Citizens	Total Members	Terms	Alternates
West Virginia Judicial Investigation Commission	10	0	8	18	3	
Wisconsin Judicial Commission	2	2	5	9	3	
Wyoming Commission on Judicial Conduct and Ethics	3	3	6	12	3	
Washington D.C. Commission on Judicial Disabilities and Tenure	1	1	3	5	6	

### **Sanction Authority and Average Dismissal Rates**

Title of Commission	Commission Issues Informal Dispositions or Private Sanctions Before Filing of Formal Charges	Commission Issues Formal Sanctions After Filing of Formal Charges	Supreme Court Issues Formal Sanctions after Commission Recommendation	Commission Cannot Remove Judge - Only by Legislative Impeachment	Average Dismissal Rate 2020-2022
Alabama Judicial Inquiry Commission/ Alabama Court of Judiciary	✓	✓			98%
Alaska Commission on Judicial Conduct	✓		✓		98%
Arizona Commission on Judicial Conduct	✓	✓	✓		92%
Arkansas Judicial Discipline & Disability Commission	✓		✓		99%
California Commission on Judicial Performance	✓	✓			98%
Colorado Commission on Judicial Discipline	✓		✓		95%
Connecticut Judicial Review Council	✓	✓	✓		99%
Delaware Court on the Judiciary	✓	✓	✓		100%
Florida Judicial Qualifications Commission			✓	✓	99%
Judicial Qualifications Commission of Georgia	✓		✓		96%
Hawaii Commission on Judicial Conduct			✓		100%
Idaho Judicial Council	✓		✓		97%

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Title of Commission	Commission Issues Informal Dispositions or Private Sanctions Before Filing of Formal Charges	Commission Issues Formal Sanctions After Filing of Formal Charges	Supreme Court Issues Formal Sanctions after Commission Recommendation	Commission Cannot Remove Judge - Only by Legislative Impeachment	Average Dismissal Rate 2020-2022
Illinois Courts Commission	✓	✓			99%
Indiana Commission on Judicial Qualifications	✓		✓		96%
Iowa Judicial Qualifications Commission	✓		✓		98%
Kansas Commission on Judicial Conduct	✓		✓		95%
Kentucky Judicial Conduct Commission	✓	✓			98%
Judiciary Commission of Louisiana			✓		97%
Maine Committee on Judicial Conduct	✓		✓	✓	100%
Maryland Commission on Judicial Disabilities	✓	✓	✓		Not Available
Massachusetts Commission on Judicial Conduct	✓		✓	✓	91%
Michigan Judicial Tenure Commission	✓		✓		97%
Minnesota Board on Judicial Standards	✓		✓		96%
Mississippi Commission on Judicial Performance	✓		✓		97%
Missouri Commission on Retirement, Removal and Discipline	✓		✓		Not Available
Montana Judicial Standards Commission	✓		✓		98%
Nebraska Judicial Qualifications Commission		✓	✓		100%
Nevada Commission on Judicial Discipline	✓	✓		✓	93%
New Hampshire Judicial Conduct Committee	✓	✓	✓		96%

Title of Commission	Commission Issues Informal Dispositions or Private Sanctions Before Filing of Formal Charges	Commission Issues Formal Sanctions After Filing of Formal Charges	Supreme Court Issues Formal Sanctions after Commission Recommendation	Commission Cannot Remove Judge - Only by Legislative Impeachment	Average Dismissal Rate 2020-2022
New Jersey Advisory Committee on Judicial Conduct	✓		✓		95%
New Mexico Judicial Standards Commission	✓		✓		90%
New York State Commission on Judicial Conduct	✓	✓			Not Available
North Carolina Judicial Standards Commission	✓		✓		98%
North Dakota Judicial Conduct Commission	✓		✓		95%
Ohio Office of Disciplinary Counsel			✓		99%
Oklahoma Council on Judicial Complaints			✓		Not Available
Oregon Commission on Judicial Fitness and Disability			✓		100%
Judicial Conduct Board of Pennsylvania	✓		✓		95%
Rhode Island Commission on Judicial Tenure and Discipline	✓		✓		Not Available
South Carolina Commission on Judicial Conduct	✓		✓		95%
South Dakota Judicial Qualifications Commission	✓		✓		97%
Tennessee Board of Judicial Conduct	✓	✓		✓	89%
Texas State Commission on Judicial Conduct	✓	✓	✓		95%
Utah Judicial Conduct Commission			✓		99%
Vermont Judicial Conduct Board	✓		✓	✓	94%
Virginia Judicial Inquiry and Review Commission	✓		✓		100%

Title of Commission	Commission Issues Informal Dispositions or Private Sanctions Before Filing of Formal Charges	Commission Issues Formal Sanctions After Filing of Formal Charges	Supreme Court Issues Formal Sanctions after Commission Recommendation	Commission Cannot Remove Judge - Only by Legislative Impeachment	Average Dismissal Rate 2020-2022
Washington Commission on Judicial Conduct	✓	✓	✓		98%
West Virginia Judicial Investigation Commission	✓		✓	✓	94%
Wisconsin Judicial Commission	✓		✓		99%
Wyoming Commission on Judicial Conduct and Ethics	✓		✓		87%
Washington D.C. Commission on Judicial Disabilities and Tenure	✓	✓			99%

JUDICIAL STANDARDS  
COMMISSION

AGENCY RESPONSE



## THE SUPREME COURT OF MONTANA

MIKE McGRATH  
CHIEF JUSTICE



JUSTICE BUILDING  
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PO BOX 203001  
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TELEPHONE (406) 444-5490  
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August 6, 2024

Mr. Angus Maciver  
Legislative Auditor  
P.O. Box 201705  
Helena, MT 59620

RECEIVED  
August 7, 2024  
LEGISLATIVE AUDIT DIV.

Dear Mr. Maciver:

On behalf of the Judicial Branch, I want to thank you for the thorough and well-researched performance audit of the Judicial Standards Commission. The audit team did an excellent job, and we welcome the overview and recommendations. As required, the following is our response to the recommendations.

**Recommendation #1**

We recommend the Judicial Standards Commission develop and implement more prescriptive written procedures, including but not limited to, typical judicial conduct commission processes such complaint receipt and review, requirements for investigations and written documentation of the results, and decision paths for communication with complainants, dismissal, and discipline.

**Response:**

**Concur.** The JSC has new draft rules, which provide a detailed process for grievance management including written documentation and procedures for complaints, dismissals, and discipline. These rules will be available for the Audit Committee's meeting.

**Recommendation #2**

We recommend the Judicial Standards Commission amend its Procedural Rules to include multiple options for informal corrective action when minor violations are identified, and to allow the commission to act quickly when circumstances merit.

**Response:**

**Concur.** The JSC has new draft rules, which allow for quicker intervention for minor violations. These rules will be available for the Audit Committee's meeting.

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**Recommendation #3**

We recommend the Judicial Standards Commission develop and implement a training plan requiring new member orientation and regular review of the state judicial system, legal terminology, complaint review process, investigation process, disciplinary factors, and all other relevant aspects of the commission's duties.

**Response:**

**Concur.** The Judicial Branch agrees a more robust training plan, particularly for lay members, is needed. The Branch will seek out on-line resources and other options for providing training for new members and on-going education for all members.

**Recommendation #4**

We recommend the Judicial Standards Commission establish processes regarding investigations to identify and retain one or more persons with investigative experience and suitable independence from judges under investigation.

**Response:**

**Concur.** The JSC has already started the process for identifying and securing appropriate independent investigators when a full investigation is necessary under the rules. The Judicial Branch provides funding for investigators and will advocate for a standalone appropriation for the JSC from the 2025 Legislature.

**Recommendation #5**

We recommend the Judicial Standards Commission establish a budgetary line item and authority for the commission's operations.

**Response:**

**Partially concur.** The Judicial Branch agrees with the recommendation and has submitted a separate budget proposal on behalf of the JSC. The partial concurrence is based on the need for legislative approval from the 2025 Legislature for the budget line-item.

**Recommendation #6**

We recommend the Judicial Standards Commission identify opportunities to provide more transparency for complainants during the complaint review process and to the public during the reporting process.



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**Response:**

**Concur.** The new rules allow for additional transparency while respecting the confidentiality requirements in the Constitution. The JSC will modify the 2025 biennial report to respond to these recommendations.

Again, we greatly appreciate the thorough review and the recommendations, which will assist in furthering the JSC's constitutionally required work.

Sincerely,



Mike McGrath  
Chief Justice

c: Judge Mike Menahan, Chairman  
Beth McLaughlin, Court Administrator  
Judicial Standards Commission members