February 2012

The Discipline and Removal of Judges in North Carolina

The Hon. Edward B. Clark

Follow this and additional works at: http://scholarship.law.campbell.edu/clr

Recommended Citation

This Article is brought to you for free and open access by Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Campbell Law Review by an authorized administrator of Scholarly Repository @ Campbell University School of Law.
I. INTRODUCTION .................................................. 2
II. THE PROPRIETARY AND COLONIAL PERIOD (1663-1776) 2
III. THE IMPEACHMENT PERIOD (1776-1973) ..................... 3
   A. The Ashe, Spencer and Williams Proceedings (1786) .......... 4
   B. The Proceedings Against Judge Edmund W. Jones (1870-1871) 8
   C. The Charges Against Chief Justice Richmond M. Pearson (1870-1871) 10
   D. The Impeachment Trials of Furches and Douglas (1901) .......... 12
   E. The Judge Harwood Resignation (1932) ..................... 15
   A. The Creation, Composition, and Powers of the Commission .... 16
   B. Confidentiality .............................................. 19
   C. Appellate Review ............................................ 20
   D. Rules of Procedure ......................................... 21
   E. The Complaints to the Commission .......................... 26
   F. Commission Action .......................................... 27
   G. Decisions of the Supreme Court ............................ 28
      1. Interpretation of the Misconduct Provisions ............. 29
      2. The Judicial Code ....................................... 30

* Judge, North Carolina Court of Appeals, and Chairman, North Carolina Judicial Standards Commission; B.S., L.L.B., University of North Carolina. The author gratefully acknowledges the assistance of Ernie K. Murray, the author's Research Assistant, 1980-1981, and Deborah R. Carrington, Executive Secretary, Judicial Standards Commission.
I. INTRODUCTION

History reveals that for more than three centuries after the Lord Proprietors of the Carolina territory appointed John Willoughby the first Chief Justice in 1670, judges in North Carolina have not been sanctioned for misconduct in office by the traditional methods of impeachment and recall. The first public censure came in 1975, and the first removal from office came in 1978. However, it would be a grave mistake to assume that the judges in this State for three centuries were above reproach or that they were regarded with awe-struck reverence. Recall was never used. Impeachment proceedings were instituted but never resulted in removal. There were methods other than the traditional methods of impeachment and recall, however, which were used to correct abuses by the judiciary. We will examine in this article some of the complaints and charges against judges in North Carolina, and the methods used in imposing or attempting to impose sanctions for misconduct in office before and after the creation of the North Carolina Judicial Standards Commission in 1973.

II. THE PROPRIETARY AND COLONIAL PERIOD (1663-1776)

The Lord Proprietors, beginning with the first Charter from Charles II on March 24, 1663, governed for a period of sixty six years. Chief Justice John Willoughby did not serve long after his appointment in 1670 before an accusation was made to the Lord Proprietors that the Chief Justice was a "person who runs himself in many errors and praemunires by his extrajudicial and arbitrary proceedings to the courts." It was also charged that he refused to grant an appeal in one case, declaring that his courts "were the court of courts and jury of juries." History does not record whether the accusation against Chief Justice Willoughby was true.

5. Battle, supra note 1, at 839-40.
More serious charges were made against the Chief Justices who followed Willoughby during the proprietary period. Christopher Gale, who in 1712 was appointed the first Chief Justice of North Carolina as a separate province, vacated his office by going to England. He was succeeded by Tobias Knight, who was accused of complicity with the pirate Blackbeard but was acquitted. Then came Chief Justice Frederick Jones who unjustly detained money paid to him in lieu of bail; his executors were forced to refund the money.

Jurisdiction over the province was transferred by the Proprietors to the Crown in 1728 but not assumed until 1731 when George Burrington, the Royal Governor, arrived from England. The Colonial Government was marked by some stormy disputes between the Governor and the Chief Justice, both appointed by the Crown. When Chief Justice William Smith accused Governor Burrington of tyrannical conduct, the Governor attempted to break the force of the attack by writing to the Board of Trade that Smith was "a silly, rash boy, a busy fool and an egregious sot, ungrateful perfidious scoundrel, and as much wanting in truth as understanding."

Other Chief Justices during the Colonial Period charged with misconduct were William Little, voted by the lower house of the Assembly to be guilty of oppression and extortion but who nevertheless served until his death in 1734; and Daniel Hanmer, who was imprisoned for perjury shortly after his appointment in 1734, serving as Chief Justice for only a few months. It is a reasonable assumption that he was removed by the Crown.

III. THE IMPEACHMENT PERIOD (1776-1973)

The first Constitution of the free State of North Carolina provided for the appointment of judges to administer justice in the new State and to "hold their offices during good behaviour." The provision that judges were to serve only during good behavior and

6. Id. at 842.
7. Id.
8. Id.
9. Id. at 843.
10. Id.
11. N.C. CONST. of 1776, reprinted in 10 The Colonial Records of North Carolina (1775-1776) 1006 (W. Saunders ed. 1890) [hereinafter cited as Col. Rec.].
12. Id. art. XIII, 10 Col. Rec. 1008.
the later Article of the Constitution of 1776 providing for the impeachment and removal of judges (as well as other officers) for "violating any Part of this Constitution, Mal-Administration, or Corruption" constituted one of the first fruits of the people's newly declared independence. The State had long wished to limit the tenure of judges to the period of their good behavior, but had been blocked by the Royal Authorities who wished judges to continue to hold their offices at the pleasure of the Crown. With independence came the end of Royal Authority, allowing the Assembly to enact constitutional provisions boldly declaring the responsibility of the judiciary to the people. These provisions were soon to be tested. A look at some of the most serious efforts to remove judges for misconduct by impeachment reveals some of the weaknesses of the traditional method.

A. The Ashe, Spencer and Williams Proceedings (1786)

Pursuant to Article XIII of the Constitution of 1776 the General Assembly elected the first judges "of the Supreme Courts of Law and Equity of the State." These three judges were Samuel Ashe, Samuel Spencer and James Iredell. Iredell resigned his seat after only one term and was replaced by John Williams. For many years Ashe, Spencer and Williams were the only judges in the State—"these three were the entire judiciary—Judges at nisi prius and Judges in bank, Judges of law and Judges of equity, Judges of the Superior and Judges of the Supreme Court." It was
a somewhat singular occurrence, then, when in 1786 a petition was presented in the Assembly to remove all three from the bench for misdemeanors in office.\textsuperscript{21}

The original charges as presented to the Assembly are no longer extant; however, Alfred Moore gives a full account of those charges in a letter to Iredell.\textsuperscript{22} The alleged offenses included:

High fines, and shameful appropriation of them.
Admitting new, and illegal prosecutions (depreciations, &c.)
The banishment of Brice and McNeill.
Dispensing with laws (the Newbern case).
Negligence of their duty, and delay of business.
Ill behavior to Mr. Hay at Wilmington.\textsuperscript{23}

The second, third, and fourth of these charges are not germane to the topic of this article; they appear to be addressed more to the proper function and to the extent of the authority of the judiciary in a new jurisdiction and not to any corruption or incompetency in office.\textsuperscript{24} The sixth can likewise be dismissed as relating more to the late review was not established until 1819. Ashe, Spencer and Williams were, however, the final authority on the law in North Carolina in 1786. Theirs are the opinions which fill the early portions of the North Carolina Reports, and they must be recognized as the supreme court of the State at that time.

21. This author is not aware of another instance involving proceedings for the removal from office of a state’s entire judiciary.

22. \textit{Id.} at 153. Moore, then Attorney General of the State and later Associate Justice of the United States Supreme Court, noted that some of the charges were “quite new” to him. He goes on to state that “these, and a few other charges which I did not understand when I read them, nor can remember now, are urged against their Honors with great violence . . . . The Assembly has resolved that I shall attend them; but do not say for what purpose . . . .”

23. The fourth of the charges, for example, appears to be a reference to the case of Bayard v. Singleton, 1 N.C. (Mart.) 5 (1787), wherein the Court ruled an act of the legislature unconstitutional and therefore void. At the time this was a radical concept: \textit{Bayard} was “the first reported case in which an act of a Legislature was declared void because contrary to a written constitution.” I R. \textsc{connor}, \textit{north Carolina: REBUILDING AN ANCIENT COMMONWEALTH} 396 (1929). Bear in mind that \textit{Bayard} was decided sixteen years before the United States Supreme Court reached the same result in \textit{Marbury v. Madison}, 5 U.S. (1 \textsc{cranch}) 137 (1803). Although the opinion in \textit{Bayard} had not yet been rendered when the charges were preferred, the Court had continued the case until the next term. Apparently, though, no secret had been made of the Court’s resolve to invalidate the Act, the Court’s delay being occasioned primarily by the hope that the Assembly, which was to meet before the next term, would revise the law so as to render it constitutional. See Letter of Samuel Ashe, C.J., to the General Assembly (14
judges’ manners than to their fitness to hold judicial office. The first and fifth, however, do relate directly to the instant topic of discipline and removal of judges for malfeasance in office.

These two charges are serious ones. If the judges appropriated to themselves the fines collected in their courts, they were guilty of the most flagrant corruption. If they neglected their duties and delayed the business of the courts, they were at least guilty of “Mal-Administration.” As might be expected, however, it was with the more political and legal questions (the second, third, and fourth) that the Assembly seemed chiefly concerned. A committee had been appointed by the Assembly to investigate the charges against the judges. Their report concentrated on the other charges but did clarify to some extent the two with which this Article is concerned.

The charge that the judges appropriated fines appears not to have been supported by specific evidence although it was reiterated in the committee’s report. It appears from the report that the true gravamen of this charge may have been that the judges “did declare that the General Assembly had no power to remit or suspend the payment of Fines until they should be paid into the Treasury.” The committee did find substantial evidence of the judges’ irregular court attendance and of their lack of dispatch in disposing of cases due to their frequent quarrels on the bench.

---

25. Indeed, neither do Mr. Hay’s manners appear beyond reproach. William Hooper, in a letter to Iredell, tells of the following “adventure in court at Wilmington, the last hour of the last term”:

Williams expressing his opinion upon the treaty of peace to Hay, and craving his attention to him. ‘So this is your opinion, Judge Williams—your servant, sir,—I wish you a good night;’ and waving his hands and hat, and dodging his elegant bow, he marched out of the courthouse.

II IREDELL, supra note 19, at 141; see also the letter of Archibald Maclaine to Iredell, II IREDELL at 143-44 for a fuller description of this incident.

26. The members of the Committee read like a “Who’s Who” of distinguished North Carolinians of the period: Archibald Maclaine, William R. Davie, William Hooper, Richard Dobbs Spaight, John Gray Blount, Jonathan Stoke, and John Sitgreaves. It was probably unfortunate for the judges that Maclaine, who along with Hay appears to be one of their chief antagonists (see II IREDELL, supra note 19, at 125), apparently chaired the committee. 18 State Rec. 194. Maclaine and Hay appear to have been law partners. 18 State Rec. 75.

27. 18 State Rec. 215.
28. Id. at 216.
also appears that there was widespread dissatisfaction with the administration of justice. It is clear, however, from the correspondence of the men of note of the period, first, that the real reason for the charges was ill feeling on the parts of Maclaine and Hay and, second, that the charges were largely overstated.

29. Hooper says:

The courts must be altered; and most earnestly do I hope that you and Mr. Johnston will have a principal share in planning a new establishment. Against the present system the cries of the people are loud; they must be heard. But what affects me most is, that the censure is pointed at the Bar, when the occasion is seated much higher. It is a melancholy consideration that we have not proper materials in this country to form the officers which the constitution makes necessary. We must do the best we can with such stuff as we have, until our academies and colleges supply us with something that may be more equal to the purpose.

Letter of William Hooper to James Iredell (6 July 1785), II IREDELL, supra note 19, at 125-26.

Hooper's opinion of the judges may have reflected the general sentiment at the time, but history has not completely borne that sentiment out. Kemp Battle, in his History of the Supreme Court (Feb. 4, 1889), 1 N.C. 835, 851 (4th ed. 1937), concludes "that the Judges were not as learned or as dignified as our [present] standards require, but they were by no means as deficient as the critical Federalist Lawyers painted them." Battle refers to Spencer as a man of "talent and influence," and Williams as "the most unlearned of the three," but points out his "unspotted reputation for integrity and charitable conduct." He says Ashe "was undoubtedly a man of force, strong in intellect and will, though his taste did not lie in hard study of the law." Battle states that the charge of "wrangling with the bar and between the Judges, so often imputed to Spencer and Williams, were not imputed to him," and notes that Ashe "had the confidence of his contemporaries." This latter observation is borne out by the fact that Ashe served for three consecutive terms as Governor of the State, beginning in 1795 at the age of 70.

30. There had long raged between the Bench and the Bar, of which Hay and Maclaine were members, a feud of major proportions. Both sides had aired their views freely in the press, and, much to the chagrin of the lawyers, the judges had gotten the better of the exchange. I R. CONNOR, supra note 24, at 396. Added to this general ill feeling, the strong personal antipathy of Maclaine and Hay seems to have reached the boiling point and roused the two men to action. Regarding Maclaine's quarrels with the judges, see II IREDELL, supra note 19, at 125. Regarding Hay's quarrels, see II IREDELL at 141. Hooper tells Iredell he hopes he will "temper the ardor of Maclaine, and keep under you the combustible stuff, which is so ready to burst and blaze forth, in our friend Hay, . . . He boils with as much fury against the judges, as Saul did against the Christians." Letter of William Hooper to James Iredell (1 August 1786), II IREDELL at 141.

31. Hooper notes "This ridiculous pursuit of Hay's . . . was conceived in spleen, and conducted with such headstrong passion, that, after the charges were made, evidence was wanting to support them." Letter of William Hooper to James Iredell (22 Jan. 1786), II IREDELL, supra note 19, at 133.
Perhaps the Assembly recognized the charges of Hay as the product of a vendetta and the report of Maclaine's committee as tainted by his personal antipathy for the judges. Perhaps the Assembly considered the charges in detail and determined evidence to be lacking. Perhaps the Assembly was convinced of the judges' innocence by the oral arguments presented by Spencer and Williams before a joint session of both Houses, or by the letter sent by Ashe in lieu of appearing in which he defended the charges stating that "In my Judicial Character I am righteous and therefore bold." It seems most likely, however, that the Assembly vindicated the judges for the same reason that it had first elected them to office; they were all three members of the majority Radical Party. At any rate the judges won out.

The Joint Assembly took up the charges separately and not only found the judges not guilty of any misdemeanor in office, but went on to adopt a resolution thanking each judge by name for his "long and faithful services."

The first attempt to remove judges from the fledgling state's judiciary had failed. Perhaps it should have. One is left wondering, however, whether the real issue considered by the Assembly was the judges' fitness to hold judicial office or their political affiliation. The question remains whether the judges neglected their duties. Also the argument of Spencer that "if he received any such fines and forfeitures it was at a time when the Currency was greatly depreciated" gives one pause.


Superior Court Judge E. W. Jones of the Second Judicial District was the next judicial officer to face Articles of Impeachment.

32. 18 State Rec. vii. The texts of these statements have not survived.
33. 18 State Rec. 137-42.
34. Recall that under the Constitution of 1776, article XIII, judges were elected by joint ballot of both houses of the Legislature.
35. See I R. CONNOR, supra note 24, at 395-96.
36. 18 State Rec. 212, 428, 429.
37. Id. at 461. To this resolution there were several protests, including of course, those of Hay and Maclaine.
38. 18 State Rec. 480. As already noted, the text of Spencer's address to the Joint Assembly is no longer extant. Supra note 32. The above quote is from the remarks of Spencer's archenemy, Archibald Maclaine, upon entering his protest to the disposition of the case, and may not fairly characterize the judge's statement.
In 1871 Judge Jones was charged by five Articles of Impeachment with as many instances of public drunkenness. It appears that it was not only the drunkenness, but the Judge's activities while inebriated that ultimately galvanized the House into action. One historian claims that the Judge hastened matters when he forced his case upon the attention of the legislature by making a brutal assault, while intoxicated, upon a Negro strumpet who was in the room. She promptly had him indicted, and a committee of investigation, which was at once appointed, found that his whole life and conduct had been such as to make him an outcast from the society of decent men.

The best example of the inadequacy of traditional methods of discipline and removal comes during the turbulent period of Reconstruction. The impeachment proceedings had begun before the Senate when certain influential members of the judiciary prevailed upon Jones to resign. Governor Tod R. Caldwell refused to accept Jones' resignation on the ground that the proceedings could not be validly stayed once trial commenced in the Senate. Having

39. N.C. House Jour. 1870-71 (1871) at 559-61.
40. J. HAMILTON, RECONSTRUCTION IN NORTH CAROLINA 562 (1914). The author states elsewhere that:

E.W. Jones, Superior Court judge for the second district, early brought shame to the bench. Starting to Raleigh for the inauguration of the new government [William Holden's, 1868, the first civil government in N.C. since the war], he made a triumphal progress of continued drunkenness and indecency. He was a public spectacle in Wilmington, and in Raleigh, he remained intoxicated during his entire stay. On several occasions he was guilty of deliberate exposure of his person upon the streets and was arrested as a nuisance. Early in the session of the legislature, James Sinclair introduced a resolution calling for an investigation of his conduct with a view to impeachment, but the House, by a vote of 51 to 31, declined to act on the ground stated by A.S. Seymour and General Abbott, both carpetbaggers, that they had nothing to do with public morals and that drunkenness was not an impeachable offence.

Id. at 347-48. Apparently, the later assault incident was the last straw.

41. The trial had begun, but barely. The Senate had agreed to employ the same rules used in the trial of Governor William W. Holden and had ordered that a summons be issued for Judge Jones to appear and answer the charges against him. It was at this point that Judge Jones tendered his resignation. N.C. Sen. Jour. 1870-71 (27 March 1871) at 701-02.

42. Hamilton states that these jurists included Chief Justice Richmond Pearson and Justice (later Chief Justice) William Rodman. J. HAMILTON, supra note 40, at 562.

43. N.C. House Jour. 1870-71 (1871) at 623.
recently completed the time-consuming and expensive process of removing from office Governor William W. Holden, however, the legislature elected to pursue the quicker, easier, and less expensive route of clearing the way for Jones' resignation. The House withdrew the Articles of Impeachment on the same day they were informed of the Governor's refusal to accept Jones' resignation.

This episode illuminates one of the chief shortcomings in the impeachment procedure. In a case in which apparently all agreed that Judge Jones was a disgrace to the bench, the great expenditure of time and money necessary to hold a trial before the Senate served to insulate Judge Jones from the sanction he may have, and most probably, deserved. Of course, had he not resigned, it is most likely that the impeachment trial would have been allowed to continue, but the charges against Judge Jones, if true, warranted his removal from office. To the contrary, because of the inconvenience inherent in the impeachment process, he was allowed to voluntarily resign and was not forced to run the risk of being "deposed from his office and disqualified from holding any office of trust or profit in the State hereafter," as had been adjudged by the Senate in the case of Governor Holden.

C. The Charges Against Chief Justice Richmond M. Pearson (1870-71).

Another incident which arose during the State's turbulent Re-

44. The subject of this article is judicial impeachments. The impeachment of Governor Holden will not, therefore, be treated. For those interested in the Holden trial, the full proceedings have been recorded in the three-volume work THE IMPEACHMENT TRIAL OF GOV. W.W. HOLDEN (1871).

45. N.C. HOUSE JOUR. 1870-71 (March 31, 1871) at 623.

46. The full record of the proceedings before the Senate on the matter of the impeachment of Judge Edmund W. Jones appears at 1870-71 Senate Journal 699-704.

47. Hamilton insists, "But for the expense, Jones would have been tried as a public example." J. HAMILTON, supra note 40, at 562.

48. N.C. HOUSE JOUR. 1870-71 (1871) at 529. This was the language of the Senate's memorial to the House reporting the outcome of the impeachment trial. The actual language of the Senate's judgment is even more sternly worded:

Now, therefore, it is adjudged by the senate of North Carolina sitting as a court of impeachment, at their chamber in the city of Raleigh, that the said William W. Holden be removed from the office of governor and be disqualified to hold any office of honor, trust or profit under the state of North Carolina.

3 IMPEACHMENT TRIAL OF W. W. HOLDEN 2559 (1871).
DISCIPLINE AND REMOVAL

11

construction Period underscores the political nature of the impeachement remedy.

Governor William W. Holden was impeached, convicted and removed from office in 1871. Among other crimes and misdemeanors, the Governor was charged with falsely proclaiming a state of insurrection in several Piedmont counties, and declaring martial law and making war on the citizens of those counties. Several citizens petitioned Chief Justice Richmond Pearson for writs of habeas corpus to deliver to the civil authorities numerous citizens who had been arrested during the alleged insurrection.

Such writs were Issued by the Chief Justice, but were not honored by the commander of the Governor’s military forces in the occupied area. They were returned with the message from the military commander, a George W. Kirk, to “[t]ake the papers back and tell them [the Supreme Court] that the Court [apparently a military tribunal] has been appointed to try them, (meaning the men in custody,) that he [Kirk] would surrender them on Gov. Holden’s order, but not otherwise, unless they sent a sufficient force to whip him, and take them, (meaning the persons mentioned in the several writs,) away from him.” The Chief Justice responded by directing the writs to be served on Governor Holden, who also refused to honor them. Seeing this refusal as a conflict between two branches of government, the Chief Justice delivered an eloquent opinion in which he courageously declared that the Governor “has no power to disobey the writ of habeas corpus, or to order the trial of any citizen otherwise than by jury.” The Chief Justice also faced a dilemma. He recognized that the judiciary has no power to force the Executive to obey the law. The only avenue open to Chief Justice Pearson was to declare the law and express his hope that the Governor would obey his constitutional duty to enforce that law. As he stated in the opinion: “[T]he whole physical power of the State is by the Constitution under the control of the Governor. The Judiciary has only a moral power. By the theory of the Constitution there can be no conflict between these two

49. N.C. House Jour. 1870-71 (1871) at 529.
50. Id.
51. Ex Parte Moore, 64 N.C. 802, 802 (1870).
52. Id.
53. Id.
55. Ex Parte Moore, 64 N.C. 802, 808 (1870).
branches of the government . . . . I have discharged my duty; the power of the Judiciary is exhausted, and the responsibility must rest on the Executive."  

Public opinion, however, was strongly against the Governor by this time. Calls for Holden's impeachment were widespread and at least one newspaper, The Sentinel, called for impeachment of Pearson as well, alleging that his guilt for failing to call out the posse comitatus to enforce his writs of habeas corpus was as great as the Governor's for failing to honor the writs. The charges were so pervasive that the Chief Justice felt the need to respond in the North Carolina Reports.

Pearson, however, had been a professor of law before coming to the bench and had the good fortune to have had as students many of the prominent lawyers in the State at the time. Many of these lawyers held positions in the government and exercised their influence in behalf of the Chief Justice. At any rate, no official action was ever taken against Chief Justice Pearson. It appears today that his conduct did not warrant impeachment, but at the time, proceedings could have been forestalled by Chief Justice Pearson's prestige and personal influence.

D. The Impeachment Trial of Furches and Douglas (1901).

Governor Daniel L. Russell, a Republican-Populist, was elected in 1896. In 1897 the General Assembly, controlled by the Republican-Populists, passed an Act to promote the oyster industry in North Carolina. Governor Russell appointed Theophilus White as Chief Inspector of the oyster industry for a period of four years. The Act fixed his compensation at $75.00 per month plus expenses.

In 1898 there was a political turnaround and the General Assembly was controlled by the Democrats. In 1899 the Assembly passed a new Act which named seven commissioners for the shellfish industry, repealed the 1897 Act, and provided that no pay-

56. Id. at 810-11.
57. J. Hamilton, supra note 40, at 537.
58. 65 N.C. 349 (1871).
59. J. Hamilton, supra note 40, at 541.
60. In fact, he was allowed to preside over the impeachment trial of Holden.
1 THE IMPEACHMENT TRIAL OF W.W. HOLDEN 18, 20-21 (1871).
61. Much of the background for this part of the article is borrowed from Justice J. William Copeland's story Much Ado About An Inspector's Pay, in the May 1978 issue of "The State," Vol. 45, No. 12.

http://scholarship.law.campbell.edu/clr/vol4/iss1/1
White instituted a *quo warranto* to test his right to be Chief Inspector. In *White v. Hill*, the Supreme Court held that White was entitled to hold the office of Chief Inspector for the remainder of his four-year term. The opinion was written by Chief Justice Faircloth in which Justices Furches, Douglas, and Montgomery joined. Justice Clark dissented. Faircloth, Furches and Douglas were Republicans. Montgomery and Clark were Democrats.

The State Auditor and Treasurer ignored the Supreme Court decision and refused to pay White, who then brought a mandamus proceeding to compel payment. In *White v. Ayer*, the Supreme Court in a 3-2 decision directed that payment be made. Chief Justice Faircloth and Justices Furches and Douglas were the majority, each being Republicans. Justices Clark and Montgomery, Democrats, dissented. The majority based its opinion on the principles of law that a public office was private property, relying on *Hoke v. Henderson*. The Treasurer was later ordered by the Court to make the payment and he complied. The *Hoke* decision was subsequently overruled in *Mial v. Ellington*.

The Democrats were aroused. Aycock was elected Governor in 1900. Before he was sworn in on January 15, 1901, Governor Russell appointed Furches as Chief Justice after Faircloth died on December 30, 1900, and he appointed Charles A. Cook, Republican, to take the Furches seat. Soon after the General Assembly, controlled by the Democrats, came to Raleigh, Articles of Impeachment were presented in the House against Chief Justice Furches and Justice Douglas, and the House elected a Board of Managers to be in charge of the proceedings. The five Articles generally charged the judges with violating their oath of office in ordering the State Treasurer to pay to White the sum of $831.15 pursuant to the *White v. Ayer* decision.

The vote in the House was fifty six votes for the five Articles of Impeachment and thirty three in opposition. Generally, the vote followed party lines.

On 20 February 1901, Articles of Impeachment were sent to

---

62. 125 N.C. 194, 34 S.E. 432 (1899).
63. 126 N.C. 570, 36 S.E. 132 (1900).
64. 15 N.C. 1 (1833).
65. 134 N.C. 131, 46 S.E. 961 (1903).
66. N.C. HOUSE JOUR. 1901 at 713.
the Senate," which was charged under the Constitution with the duty of trial. Evidence was presented for over two weeks. The Senate and counsel for the prosecution and the judges relied chiefly upon the Andrew Johnson Impeachment trial in the United States Senate for legal authority. All of the members of the Supreme Court, except the recently appointed Justice Cook, appeared as witnesses, and they were questioned extensively and in detail about what occurred during the court conferences relating to White v. Ayer. The defending judges contended they were only interpreting the law as they understood it." The prosecution contended they were involved in a Republican conspiracy to illegally retain and pay a Republican officeholder, Theophilus White.

After the evidence was in, counsel for the prosecution and the defense made arguments so lengthy that only the opening and closing arguments were included in the printed record of the trial. This was followed by a roll call, and each Senator was permitted two minutes in which to explain his vote. The vote on the first Article was twenty seven for guilty and twenty three not guilty, and this was the strongest vote for the prosecution, which did not get a majority vote on any of the other four Articles. Thus, the prosecution failed to get the two-thirds majority which the Constitution required for impeachment.

Justice Copeland in his article in the May 1978 issue of "The State" made the following conclusive comment:

"Today, when I look back on this trial with all its ramifications, I must conclude that it was a political trial. Chief Justice Furches and Justice Douglas appeared to have overreacted to the loss of one little job held by Theophilus White. They had no right to invade the State Treasury for the $831.15 to pay White when this money had not been appropriated by the General Assembly for this purpose. But it was a borderline impeachable offence. It is remarkable that the participants in 1901 voted very much like the respective counties they represented would vote today. Under the circumstances the acquittal of Chief Justice Furches and Justice Douglas came about because of a few conscientious Democrats, such as Judge Henry Groves Connor, who did their duty as they saw it. But those involved, as well as their kinmen, who stood with the Democratic party in this trial received many of the political rewards for the next fifty years."
E. The Judge Harwood Resignation (1932).

John H. Harwood was appointed by Governor McLean in 1926 to serve the unexpired term (six months) of Resident Superior Court Judge Bryson. For the first time, in 1927, the Legislature created the office of Special Judge of Superior Court, requiring the Governor to appoint four Special Judges. Harwood was appointed in 1927 by Governor McLean and reappointed by Governor Gardner in June 1931.

An audit of the License Bureau of the Department of Revenue in 1931 revealed that Lola G. Hatwood, a clerk, failed to account for $4,903. A civil action was instituted against her by the State to recover this sum. She denied the allegations.

In July, 1931, Judge Small ordered that the defendant and her counsel have access to the books and records of the Department of Revenue for the purpose of examining them. A bill of indictment for embezzlement was returned against Miss Harwood at the September Term, 1931, Superior Court of Wake County. J. M. Broughton was appointed referee.

Judge Harwood, father of the defendant, under the authority of Judge Small's order, was allowed access to the books and records of the Department, and on several occasions he was alone in the Revenue Building before and after the usual working hours. An examination of the relevant books and records on February 1, 1932, revealed erasures, substitutions, and mutilations made after the 1931 audit which tended to exculpate Miss Harwood. A bill of indictment was returned against Judge Harwood for the erasure and mutilation of these public records.

Judge Harwood on April 15, 1932, wrote two letters to Governor Gardner. In one he resigned as Special Judge of Superior Court. In the other he expressed regret for any embarrassment he may have brought to the Governor and added, "I was too weak to withstand the temptation. She is my only child . . . ." 73

In State v. Harwood, it is revealed that Judge Harwood and his daughter, Lola, entered pleas of guilty to the charges against 1978).

71. Letter from Attorney General Dennis G. Brummitt to Governor Gardner (11 Feb. 1932) [in Governor Gardner Papers, General Correspondence 1929-1933 (No. 104), Dept. of Archives and History].
72. Id.
73. 206 N.C. 87, 173 S.E. 24 (1934).
them at the April Term, 1932. Presiding Judge Dewin sentenced John H. Harwood to imprisonment for one year in the State Prison, and further ordered that he be disbarred from practicing as an attorney at law. After serving his prison term, Harwood, in October, 1933, moved to vacate the order of disbarment. The motion was denied and on appeal was affirmed by the Supreme Court, which in its decision made the following comment: "The case is that of a licensed attorney who, after appointment to the bench, turned from the exercise of judicial functions to the private inspection and the secret and deceptive mutilation and destruction of momentous public records . . . ." 74

Without question Judge Harwood resigned because of the pending criminal charge against which he had no effective defense. The author is aware of other resignations by judges while charges or complaints were pending, but the reasons for these resignations are not so obvious. Whether the pending charges or complaints materially influenced the resignation decision is purely speculative.


A. The Creation, Composition, and Powers of the Commission.

In 1960, the State of California created its Commission on Judicial Qualifications,75 now called the Commission on Judicial Performance, and as such became the first state to respond to the cumbersome, expensive, and ineffective nature of traditional remedies for judicial misconduct or disability such as impeachment, address, or even elections. Thirteen years later, North Carolina joined the twenty four other states and the District of Columbia which had followed California's lead by creating judicial conduct organizations.76 Today, all the states and the District of Columbia have established systems77 to respond to those instances in which the misconduct or physical or mental disability of a member of the judiciary threatens to undermine the integrity of the judicial process.

The Judicial Standards Commission of North Carolina was

74. Id. at 89, 173 S.E. at 25.
75. CAL. CONST. art. VI, §§ 8, 18.
76. See I. Tesitor & D. Sinks, Judicial Conduct Organizations (2d ed. 1980).
77. Id.; Washington was the last state to establish a judicial conduct organization when an amendment to its Constitution was ratified in November, 1980 (WASH. CONST. art. IV, § 31, amend. 71).
created by an amendment to Article IV, § 17, of the Constitution of North Carolina which was proposed by the General Assembly and approved by the voters in the general election on November 7, 1972. The primary effect of the amendment was to add a new subsection (2) to section 17 of the Constitution dealing with the removal of judges, magistrates, and clerks of court. The amendment mandated the General Assembly to prescribe a procedure in addition to impeachment or address for the removal of judges, both trial and appellate. Interestingly, this amendment also contained the first authorization for censure, a disciplinary measure in the nature of a formal, public reprimand designed to address instances of misconduct which do not warrant removal. The procedure adopted would be designed to censure or remove a judge or justice for willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, willful and persistent failure to perform his or her duties, habitual intemperance, or conviction of a crime involving moral turpitude. In addition, a judge or justice could be removed from office for mental or physical incapacity which was interfering with the performance of judicial duties and was, or was likely to become, permanent.

In light of the mandate embodied in this amendment, the General Assembly enacted a new Article 30 to Chapter 7A of the General Statutes and thereby established, effective January 1, 1973 and conditioned upon ratification of the proposed amendment to Article IV, § 17, the Judicial Standards Commission (hereinafter referred to as the Commission).

The original statutory provisions relating to the Commission describe its composition and the terms of members, reiterate the constitutional grounds for censure or removal, prescribe the consequences of removal, establish certain procedural guidelines and standards for proceedings before the Commission concerning a justice or judge, and authorize the employment of a staff. While amendments have been few, provisions were added which dealt with appointment of an alternate in case of disability or disqualification of a Commission member and provided for participation in formal proceedings begun prior to expiration of a non-judicial

79. N.C. Const. art. IV, § 17(2).
member's term or termination of a judicial member's term by virtue of retirement or resignation from judicial office or expiration of the judicial term of office.\textsuperscript{82} In addition, staff assistance was enlarged to provide investigative capacity; and statewide authority to serve subpoenas or other process issued by the Commission was granted to the executive secretary, special counsel, and investigator.\textsuperscript{83} Then, in 1975, the General Assembly allowed judicial members to be paid their travel and subsistence expenses incurred in the course of Commission business.\textsuperscript{84} Finally, and most importantly, the General Assembly passed legislation which addressed concerns regarding what might happen should a Commission recommendation ever be filed involving a justice of the North Carolina Supreme Court. Under then existing statutes, North Carolina General Statutes, sections 7A-376 and 377,\textsuperscript{85} such a recommendation would be filed with and reviewed by the Supreme Court and could raise jurisdictional questions as well as questions regarding conflict of interest and disqualification. [North Carolina General Statutes hereinafter designated G.S.] In response to such concerns, the Legislature ratified a bill,\textsuperscript{86} the result of which was to establish a procedure whereby a Commission recommendation for censure or removal of a Supreme Court justice would be filed with and reviewed by a seven-member panel of the North Carolina Court of Appeals. The panel was to consist of the chief judge and the six judges most senior in service, excluding the judge serving as the Commission's chairman.\textsuperscript{87}

The Commission is composed of seven members: a Court of Appeals judge who by law serves as the chairman, a superior court judge, and a district court judge appointed by the Chief Justice of the Supreme Court; two attorneys elected by the Council of The North Carolina State Bar; and two citizens appointed by the Governor. Although one judge, one attorney, and one citizen member were initially appointed to three-year terms in order to achieve overlapping, the regular term for any member is six years; and once a member has served a full six-year term, he or she cannot be reappointed.\textsuperscript{88} While some may argue that the composition of the

\begin{itemize}
  \item \textsuperscript{82} 1973 N.C. Sess. Laws, ch. 50.
  \item \textsuperscript{83} 1973 N.C. Sess. Laws, ch. 808.
  \item \textsuperscript{84} 1975 N.C. Sess. Laws, ch. 956.
  \item \textsuperscript{85} N.C. GEN. STAT. §§ 7A-376, 377 (1981).
  \item \textsuperscript{86} 1979 N.C. Sess. Laws, ch. 486.
  \item \textsuperscript{87} N.C. GEN. STAT. § 7A-378 (1981).
  \item \textsuperscript{88} Id. § 7A-375.
\end{itemize}
Commission leans too heavily in favor of judges and automatically biases the Commission in favor of any judge who is the subject of a complaint, it may also be argued that strong representation on such a disciplinary agency by members of the judiciary is imperative in order to insure responsible action by the Commission and to prevent "overkill," particularly in light of the confidential nature of Commission proceedings and the fact that the Commission is dealing with elected officials. On the other hand, the Commission must maintain the confidence of the people as well as that of the judiciary, and the presence of lay members is designed to enhance the credibility of the Commission and its proceedings.

As the appropriate agency for review of complaints "concerning the qualifications or conduct of any justice or judge of the General Court of Justice," the Commission is empowered to receive complaints of judicial misconduct or disability, order investigation of such complaints or initiate an investigation on its own motion, institute formal proceedings, conduct hearings, and recommend disciplinary action if five members concur. It is important to note that the Commission itself can neither censure nor remove; it aids the Supreme Court or Court of Appeals in determining the fitness of a judge or justice, and it is for the appropriate court to actually impose any sanctions. As Justice Exum first stated and as the Supreme Court has reiterated:

[A proceeding before the Commission] is neither criminal nor civil in nature. It is an inquiry into the conduct of a judicial officer, the purpose of which is not primarily to punish any individual but to maintain due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges.

B. Confidentiality.

Once a recommendation has been filed, it becomes public along with the record supporting it; otherwise, all proceedings before the Commission and papers filed with the Commission are considered confidential unless the judge involved otherwise requests. This confidentiality feature is not uncommon; in fact, all jurisdictions having judicial conduct organizations include such

89. Id. § 7A-377(a).
90. Id.
provisions.92 The distinction among the jurisdictions relates to the
point at which confidentiality ceases. North Carolina is among the
plurality of jurisdictions in which confidentiality ceases when a
commission or similar body makes its recommendation for disci-
pline. In fourteen jurisdictions confidentiality ceases when formal
charges are filed by the conduct organization.93

This confidentiality is designed not only to protect a judge's
reputation and the integrity of the judiciary from unfounded or
frivolous complaints but also to encourage those who feel they
have knowledge of judicial misconduct to express their concern by
making a complaint. However, experience has revealed that when
the formal complaint has been filed and subpoenas issued, the na-
ture of the charges and the Commission hearing become known to
the public and the news media. Confidentiality beyond the point
when the formal complaint is filed results in reduced public confi-
dence and deprives judges of accurate information as to the proper
limits of judicial discretion.

C. The Appellate Review.

After a recommendation is filed, the respondent judge must
petition the Supreme Court for review, and by petitioning for re-
view, the respondent preserves his right to file a brief and present
oral argument.94 The Commission's recommendation is "not bind-
ing on the Supreme Court, which will consider the evidence of both
sides and exercise its independent judgment as to whether it
should censure, remove, or decline to do either."95 Essentially, the
Court must determine, based on the record of proceedings before
the Commission, whether the findings of fact and conclusions of
law of the Commission are supported by clear and convincing evi-
dence, the requisite burden of proof;96 whether the conduct in
question constitutes one of the grounds for censure or removal
specified in the Constitution and by law; and the appropriate disces-
plinary sanction to be imposed, if any. Thus, it is for the Court to
approve or reject the recommendation or remand it for further

92. See 1981 Wash. Laws, ch. 268; I. TESITOR & D. SINKS, supra note 76.
93. I. TESITOR & D. SINKS, supra note 76.
94. Rule 2, Rules for Supreme Court Review of Recommendations of the Ju-
96. Id. at 247, 237 S.E.2d at 254.
proceedings.\textsuperscript{97}

Although the consequences of removal from office for other than mental or physical disability include loss of retirement benefits and disqualifications from holding further judicial office,\textsuperscript{98} "censure and removal are not to be regarded as punishment but as the legal consequences attached to adjudged judicial misconduct or unfitness."\textsuperscript{99} While certainly not as serious as the sanction of removal, censure can deter the respondent judge from pursuing a similar course of conduct in the future. Because of its public nature and the weight it carries, censure can also place other members of the judiciary on notice that the particular conduct involved violates the standard of behavior expected of a judicial official.

D. Rules of Procedure.

Pursuant to statutory authority,\textsuperscript{100} the Commission adopted a set of twenty rules at its first meeting on February 2, 1973, to govern its operation.\textsuperscript{101} In this regard the Commission is in the somewhat unique position of being able to promulgate its own rules of procedure without any requirement for approval, adoption, or certification by the Supreme Court. Perhaps since proceedings before the Commission could involve a justice of the Supreme Court, the legislature recognized the independent existence of the Commission by granting such rule-making authority.

In addition to providing a framework for the orderly disposition of complaints concerning the conduct of a member of the judiciary, the rules also incorporate safeguards in an effort to insure that proceedings before the Commission comport with basic due process requirements. For example, the rules provide for notice of the charges against the respondent and the identity of the complainant;\textsuperscript{102} the opportunity to file an answer;\textsuperscript{103} notice of the formal hearing;\textsuperscript{104} the right to a public hearing;\textsuperscript{105} and the right to

\textsuperscript{97} N.C. GEN. STAT. § 7A-377(a) (1981). The power of the Supreme Court to impose a sanction other than that recommended by the Commission is discussed in Note, 14 \textit{Wake Forest L. Rev.} 1187 (1978).

\textsuperscript{98} Id. § 7A-376.


\textsuperscript{100} N.C. GEN. STAT. § 7A-377(a) (1981).


\textsuperscript{102} Id. R. 8.

\textsuperscript{103} Id. R. 9.

\textsuperscript{104} Id. R. 10.
counsel, to introduce evidence, to examine and cross-examine witnesses, and to have subpoenas issued for attendance of witnesses or for production of books, papers, and other evidentiary matter.106

Proceedings before the Commission generally are triggered by receipt of a written complaint.107 No particular complaint form is used; a letter narrating what has occurred and what particular conduct is being questioned is sufficient. The principal effect of the requirement is to screen complainants whose credibility falters when asked to reduce their grievance to written form. This requirement that a complaint be submitted in writing does not preclude the Commission from considering allegations made orally or which are brought to its attention by another governmental agency or official or through media reports since the Commission has the option of proceeding on its own motion.108 The Commission recognizes that in spite of the confidentiality provisions relating to its proceedings and papers filed in relation thereto, there may be complainants such as lawyers, judges, or litigants who prefer to remain anonymous. In such instances the reliability of the source may be the key factor in a Commission determination to proceed on its own motion.

Once a complaint is received, it is acknowledged, appropriately indexed, and placed on the agenda of items for review by the Commission to determine whether an investigation is warranted. Upon its initial review, the Commission determines whether the allegations involve a judge and whether the alleged facts indicate conduct which is of such a nature as warrants further action, i.e., would the conduct, if proven true, constitute one of the grounds for censure or removal. If the Commission determines that a complaint contains factual allegations of judicial misconduct or disability, it then orders a preliminary investigation. As noted earlier, the Commission can also order an investigation on its own motion based on information from a reliable source. If the Commission determines that no action is warranted, the complainant is so advised and can request reconsideration of the determination if the complainant disagrees with the action.109

105. Id. R. 4.
106. Id. R. 13.
Following initiation of a preliminary investigation, the respondent judge and the complainant are notified of the investigation, and the respondent is advised of the nature of the allegations and of the opportunity to submit such information regarding the complaint as he or she may choose. The respondent is not advised at this point of the complainant's identity although the respondent is told whether the investigation is based on a written complaint duly filed with the Commission or has been ordered by the Commission on its own motion. Because the Commission attempts to draft the notice of investigation with such particularity as will allow the respondent to respond in a meaningful manner, however, the respondent may be able to determine the complainant's identity with some degree of certainty, especially where a particular case is involved. Although the rules do not require it, the general practice of the Commission has been to advise the complainant as well that an investigation has been ordered. This can be particularly important where the complainant is involved in pending litigation or litigation of an on-going nature such as a domestic matter.

Based on the information developed by the investigation and included in the preliminary investigative report, the Commission determines whether formal proceedings should be instituted. If so, the respondent is served with a notice of proceedings identifying the complainant, specifying the charge or charges against him or her in ordinary and concise language, and advising him or her of the right to file a written, verified answer within twenty days after service of the notice. At the same time, the respondent is served with a copy of the verified formal complaint filed by special counsel to the Commission which sets forth the alleged facts upon which the charge or charges are based.

After the respondent's answer is filed or upon expiration of the time allowed for filing, the Commission orders a formal hearing which cannot be held sooner than ten days after the answer is filed or the time allowed for filing an answer has expired, unless the respondent consents to an earlier hearing. The provision for filing an answer is permissive rather than mandatory, and there is very little incentive for a respondent to answer the charges prior to
the hearing since the Commission must proceed whether or not an answer has been filed or the respondent appears. In addition, the respondent's failure to answer or appear cannot be used as evidence of the facts alleged in the charges.\textsuperscript{118} Since Commission proceedings are "neither criminal nor civil in nature,"\textsuperscript{116} it is arguable that a better approach would be to require filing of an answer and allow a respondent's failure to answer to appear to be taken as some evidence of the truth of the facts alleged without going so far as to deem failure to answer to be an admission of the allegations of the formal complaint as would be the case in a civil matter.\textsuperscript{117}

Chief Justice Sharp, writing for the Supreme Court in \textit{In re Peoples}, specifically commented on the respondent's failure to answer the charges and his failure to testify or appear in person at the hearing.\textsuperscript{118} The former Chief Justice points out that it is only in criminal cases that a defendant's failure to testify creates no presumption against him or her. Quoting from several decisions, Sharp states that in all other proceedings "[i]f the party is a competent witness, his failure to go upon the stand 'when the case is such as to call for an explanation . . . or the evidence is such as to call for a denial,' it is a 'circumstance against him' and a 'proper subject of fair comment.'"\textsuperscript{119} On the other hand, the present approach does put the Commission to its proof which may be more desirable in light of the potentially severe consequences to the respondent upon adverse findings by the Commission.

At the conclusion of a formal hearing, the Commission must determine whether to recommend censure or removal, a determination requiring the affirmative vote of five members.\textsuperscript{120} If a recommendation for censure or removal is approved, a record of the proceedings is prepared, including a transcript of the formal hearing, along with findings of fact and conclusions of law in support of the recommendation, and time is allowed for settlement of any objections the respondent might have to the record.\textsuperscript{121} Upon settlement of the record, it is filed with the appropriate court for

\begin{itemize}
\item\textsuperscript{115} \textit{Id.}
\item\textsuperscript{116} \textit{In re Crutchfield}, 289 N.C. 597, 602, 223 S.E.2d 822, 825 (1975).
\item\textsuperscript{117} N.C. GEN. STAT. § 1A-1, Rule 8(d) (1967).
\item\textsuperscript{119} \textit{Id.} at 152, 250 S.E.2d at 915 (1978).
\item\textsuperscript{120} Judicial Standards Comm's R. 10, 16, \textit{supra} note 101.
\item\textsuperscript{121} \textit{Id.} R. 13, 18.
\end{itemize}
The rules of the Commission are simple and not intended to treat all procedural questions which may arise, but the Commission has made them work. Due process rights have been recognized and questions raised have been determined on their merits.

It should be noted that in the course of proceedings before the Commission, a disciplinary measure known as a private reprimand is occasionally used although no provision for such action is specifically recognized in the statutes or the Commission rules. The private reprimand has been developed by the Commission to deal with complaints in which the conduct may be improper but the nature of the conduct or the attitude of the judge indicates that a recommendation for censure or removal would be unwarranted. The judge is required to appear before the Commission for service and reading of the reprimand. Issuance of a private reprimand can occur at any stage of Commission proceedings following completion of the preliminary investigation, even after a formal hearing, and it effectively terminates proceedings. However, the reprimand is recorded in the respondent's case file, thereby putting him or her on notice of the Commission's views regarding the conduct and the consequences which may ensue any repetition.

It should also be noted that despite a steady workload increase, the Commission had no full-time staff prior to 1977. It had the statutory authority to employ the services of an executive secretary, investigator, and special counsel, but no legislative appropriation prior to 1976 to cover such costs; therefore, the Commission chairman and secretary performed the duties which would ordinarily be done by an executive secretary. In 1976 the Commission called on the State Bureau of Investigation and a Judicial Department employee to perform investigative work, and the Attorney General and The North Carolina State Bar provided attorneys to serve as special counsel when needed. Finally, in 1977 a permanent staff consisting of an executive secretary, investigator, and secretary was established through a grant from the Law Enforcement Assistance Administration of the U. S. Department of Justice, and the program cost was assumed by the State on July 1, 1979. The presence of a staff facilitates the Commission in the performance of its disciplinary responsibilities and increases its visibility and accessibility to the public.

122. Id. R. 19, 20.
E. The Complaints to the Commission

An examination of data available covering Commission caseload and activities during its nine-year existence reveals that the Commission has received a total of 476 complaints and, as of the end of 1981, had disposed of all but five matters; four complaints pending initial review and one preliminary investigation awaiting further action. Its caseload has gone from twenty three complaints filed in 1973, its initial year of existence, to a high of eighty seven complaints filed in 1980. It is interesting to note that only fifty six complaints were filed in 1981 which represents a rather significant 36% drop from the previous year. By looking at sources of complaints in these two years, it is readily apparent that a sharp reduction in the number of complaints filed by civil litigants and criminal defendants precipitated the decline in caseload; however, one can only speculate as to why these sources did not file with as much frequency. Since these complaint sources are the most likely to question judicial rulings or decisions in cases and such questions are not within the Commission's jurisdiction, one might assume that the public is more knowledgeable concerning the Commission's authority and function. Such an assumption may be completely unwarranted, however, since the percentage of 1981 complaints investigated is consistent with the percentage of total complaints filed during prior years which were investigated, and if complaints without merit were being reduced as a result of public knowledge of the Commission's function, one might expect the percentage of complaints investigated to increase.

Generally, the most frequent subjects of complaints filed with the Commission in its history have been district court judges. While exact numbers are unavailable for all years, the data for 1980 and 1981 reveals that the 143 complaints filed in those years involved 150 judges, nearly 77% of whom were district court judges. Almost 23% were superior court judges, and less than 1% were appellate court judges.

During this same two-year time period, the most frequent complainants were civil litigants who filed 38% of the complaints. Non-litigating citizens such as friends or relatives of civil litigants or criminal defendants and witnesses constituted 22% of the complainants, and criminal defendants were responsible for 13% of the complaints.

Traditionally, the subject matter of many complaints has seemed to involve questions concerning legal decisions, evidentiary rulings, and judgments. This traditional view is supported by an
examination of 1980 and 1981 complaints. While it is occasionally
difficult to categorize the nature of the judicial conduct complained
of, roughly 34% of the questions raised in complaints against
judges related to legal decisions, evidentiary rulings, or judgments;
another 15% of the questions concerned alleged procedural or ad-
ministrative irregularities; and 16% dealt with courtroom
demeanor.123

F. Commission Action

As one might suspect in view of the large percentage of ques-
tions regarding legal decisions, evidentiary rulings, or judgments, a
large percentage of complaints received are disposed of early in the
filtering process. Of the 476 complaints received by the Commis-
sion in its nine-year history, 398 (84%) have been concluded after
initial review. Of this number, 333 (70%) were not within the
Commission’s jurisdiction and primarily either presented no allega-
tions of judicial misconduct or presented matters for appeal or
other legal remedy. Sixty five complaints were determined to pre-
sent allegations of misconduct which were not of such a nature as
to warrant investigation or other action. Another four complaints
were awaiting initial review at the end of 1981.

The Commission has ordered sixty five preliminary investiga-
tions covering seventy four (16%) of the 476 complaints received,
and only one investigative file remained open as of the end of 1981.
Of the sixty four preliminary investigations completed, thirty four
were closed after consideration of the preliminary investigative re-
port, three were closed after a formal hearing was held, seven were
closed after the respondent judge vacated office, eleven resulted in
the issuance of a private reprimand, five resulted in recommenda-
tions for censure, and four resulted in three recommendations for
removal.124

Of the eight recommendations for censure or removal filed by
the Commission in its history, seven have been approved; however,
the Supreme Court declined to remove the respondent judge in-
volved in the Commission’s first recommendation for removal and
censured the respondent instead.125

123. The statistics and analyses presented in this section are the product of
informal investigation of Commission records by the author and his staff.
124. Id.
G. Decisions of the Supreme Court

In the course of its consideration of the eight recommendations for judicial censure or removal, the Supreme Court has established several principles relating to standards of judicial conduct, definitions of conduct proscribed by Article IV, §17(2) of the North Carolina Constitution as well as G.S. §7A-376, and imposition of a particular disciplinary sanction. In addition, the Court has had to respond to constitutional, jurisdictional, and procedural challenges to such proceedings.

The first five recommendations to reach the Supreme Court from the Commission were strikingly similar in that each involved charges of *ex parte* dispositions of criminal cases. The conduct generally involved disposing of criminal cases out of court without a hearing and in the absence of the prosecuting district attorney. In each instance the Commission had recommended censure, and in each instance the Court accepted the Commission’s recommendation and censured the respondents for conduct prejudicial to the administration of justice that brings the judicial office into disrepute or for both willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The sixth proceeding to reach the Supreme Court from the Commission again involved charges of various *ex parte* actions in both civil and criminal cases. However, it also involved a charge that the respondent had solicited an arresting officer to testify falsely as to his presence during the administration of a breathalyzer test. In light of the more serious nature of this charge, the Commission had recommended removal. Although the Court recognized the seriousness of the misconduct involved in the latter charge, a charge which, if proven, would amount to a finding that the respondent had suborned perjury and certainly would warrant the respondent’s removal from office, it felt that the evidence did not clearly and convincingly support the Commission’s findings with regard to this charge. Thus, since the requisite burden of


127. Id.


129. Id. at 306, 308, 245 S.E.2d at 775, 776.
proof established in In re Nowell had been met only with regard to the charges dealing with ex parte actions and apparently showing some recognition for the respondent’s lack of legal training, the Court declined to remove the respondent and censured him instead.

1. Interpretations of the Misconduct Provisions.

From the outset the Court has had to determine whether the conduct involved in each case and proven by clear and convincing evidence has constituted one of the grounds requisite to the censure or removal it has imposed in each case. In so doing, the Court has defined and distinguished between conduct prejudicial to the administration of justice that brings the judicial office into disrepute and willful misconduct in office.

Conduct prejudicial to the administration of justice that brings the judicial office into disrepute has been defined as conduct by a judge which is undertaken in good faith but to an objective observer appears to be unjudicial and prejudicial to public esteem for the judicial office. The fact that a judge receives no benefit, financial or otherwise, from the conduct in question is irrelevant, and “[w]hether the conduct of a judge may be characterized as prejudicial to the administration of justice . . . depends not so much upon the judge’s motives but more on the conduct itself, the results thereof, and the impact such conduct might reasonably have upon knowledgeable observers.” The test then seems to be whether the behavior in question would indicate to an objective observer with full knowledge of the conduct that the judge’s ability to carry out the responsibilities of the office impartially has been impaired.

Willful misconduct has been defined as:

[T]he improper or wrongful use of the power of his office by a judge acting intentionally, or with gross unconcern for his conduct, and generally in bad faith. It involves more than an error of judgment or a mere lack of diligence. Necessarily, the term would encompass conduct involving moral turpitude, dishonesty, or corruption, and also any knowing misuse of the office, whatever the

132. Id. at 308, 245 S.E.2d at 776.
motive. However, these elements are not necessary to a finding of bad faith. A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority constitutes bad faith . . . .

Willful misconduct in office of necessity is conduct prejudicial to the administration of justice that brings the judicial office into disrepute. However, a judge may also, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to the administration of justice so as to bring the judicial office into disrepute. . . . Likewise, a judge may also commit indiscretions, or worse, in his private life which nonetheless brings the judicial office into disrepute.135

In applying these definitions to the conduct involved in all of the recommendations which have been reviewed by the Supreme Court, the Court has emphasized that:

Consideration should be given to the traditions, heritage, and generally recognized practices of the courts and the legal profession, the common and statutory law, codes of judicial conduct, and traditional notions of judicial ethics. While not necessarily determinative these may be usefully consulted to give meaning to the constitutional and statutory prohibitions.136

2. The Judicial Code

The Court and the Commission itself have continually consulted the North Carolina Code of Judicial Conduct,137 to give meaning to the standards of the N. C. Const. art. IV, § 17(2) and G.S. § 7A-376.138 This code, promulgated by the Supreme Court in 1973 pursuant to authority granted by the Legislature,139 generally recognizes that a judge's attention should be devoted primarily to the diligent and impartial performance of his judicial tasks, and in so doing, a judge should be circumspect in his extrajudicial or quasi-judicial activities in order to avoid even the appearance of impropriety.

One particular provision of the N. C. Code of Judicial Conduct has figured prominently in all of the proceedings concerning judges

139. Id. § 7A-10.1 (1973).
to date. In each of the first six proceedings which resulted in the
censure of the respondent judges involved, the Supreme Court re-
peatedly indicated that the conduct of each judge violated Canon
3A(4) of the Code which provides in part that:

A JUDGE SHOULD ACCORD TO EVERY PERSON WHO IS
LEGALLY INTERESTED IN A PROCEEDING, OR HIS LAW-
YER, FULL RIGHT TO BE HEARD ACCORDING TO LAW,
AND EXCEPT AS AUTHORIZED BY LAW, NEITHER INITI-
ATE NOR CONSIDER EX PARTE OR OTHER COMMUNI-
CATIONS CONCERNING A PENDING OR IMPENDING
PROCEEDING.140

In so doing, the Court has made it clear that a “criminal prosecu-
tion is an adversary proceeding in which the prosecuting attorney
and defendant or his counsel are entitled to be present and be
heard.”141 Furthermore, disposition of any criminal case is the pub-
lic’s concern and should be done in open court;142 and disposition
of any case for reasons other than an honest appraisal of the law
and the facts as disclosed by evidence presented in an adversary
setting will constitute conduct prejudicial to the proper adminis-
tration of justice.143

3. Standards for Censure and Removal

Once the Supreme Court has determined that the Commis-
SION’s findings of fact are supported by clear and convincing evi-
dence and that the conduct so found constitutes one of the constitu-
tional and statutory grounds for censure or removal, it must
decide whether the respondent should be censured or removed
from office. In the first six cases to reach the Court, each respon-
dent judge was censured for ex parte actions in cases, conduct
which the Court repeatedly declared to be willful misconduct in
office and conduct prejudicial to the administration of justice that
brings the judicial office into disrepute. Although the last two rec-
ommendations to reach the Court also involved charges relating to
ex parte dispositions or communications in criminal or civil cases,
the conduct involved in each recommendation had aspects which
distinguished it from conduct previously censured and was deter-

140. N.C. CODE OF JUDICIAL CONDUCT, Canon 3A(4), supra note 137.
minded to warrant the respondent's removal from office.\textsuperscript{144}

Throughout the first five proceedings the Supreme Court had declined to adopt any specific standards or guidelines for its decision as to whether a respondent should be censured or removed. However, it did state in \textit{In re Hardy}\textsuperscript{145} that "in the future the result in each case will be decided upon its own facts."\textsuperscript{146} There the Court was faced with its fifth instance of a judge recommended for censure for \textit{ex parte} dispositions in criminal conduct. After examination of the applicable statutory provisions,\textsuperscript{147} the Court held that it may order the removal of a judge when the Commission has only recommended censure.\textsuperscript{148} Since the Court concluded that fairness required it to follow the Commission's recommendation, its opinion with regard to its ability to remove instead of censure really amounted to dicta, but nonetheless generated the strenuous dissent of three members of the Court.\textsuperscript{149} Despite the split in the Court on that point, the opinion at least served as a clear warning to judges.

Again declining to set specific guidelines for its decision whether to censure or remove, the Court did provide general guidance on this question in \textit{In re Martin}.\textsuperscript{150}

\textit{[W]here a judge's misconduct involves personal financial gain, moral turpitude or corruption, he should be removed from office. Further, if a judge knowingly and wilfully persists in indiscretions and misconduct which this Court has declared to be, or which under the circumstances he should know to be, acts which constitute wilful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute, he should be removed from office. Unquestionably, any act by a judge or justice which is prejudicial to the administration of justice and brings the judicial office into disrepute warrants censure.}\textsuperscript{151}

Then in \textit{In re Peoples}\textsuperscript{152} Chief Justice Sharp, speaking for the

\textsuperscript{145} 294 N.C. 90, 240 S.E.2d 367 (1978).
\textsuperscript{146} Id. at 98, 240 S.E.2d at 373.
\textsuperscript{147} N.C. GEN. STAT. §§ 7A-376 and -377(a) (1971).
\textsuperscript{149} Id. at 98, 240 S.E.2d at 373 (dissenting opinion).
\textsuperscript{150} 295 N.C. 291, 245, S.E.2d 766 (1978).
\textsuperscript{151} Id. at 305-06, 245 S.E.2d at 775.
\textsuperscript{152} 296 N.C. 109, 250 S.E.2d 890 (1978), \textit{cert. denied}, 442 U.S. 929 (1979).}
Court, distinguished between conduct prejudicial to the administration of justice and willful misconduct in office. The Chief Justice stated that since the former is not *per se* as serious as willful misconduct, unless it is knowingly and persistently repeated, a judge should be removed from office only for willful misconduct in office. Applying this standard to the conduct involved in *People*, the Court held that the “repeated and purposeful misconduct and persistent indiscretions constitute[d] willful misconduct in office and require[d] that [Judge Peoples] be officially removed from office.”

There Judge Peoples had engaged in a course of conduct in which *ex parte* dispositions had occurred over a time span extending as much as seven years and had involved numerous cases. In addition, there was evidence that the respondent had received money from defendants for costs and fines, had failed to apply it for the purpose intended, and had failed or been negligent in returning it to the defendants. This practice was strongly condemned by the Court and defined as constituting willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The last recommendation to be filed by the Commission with the Supreme Court also involved *ex parte* actions in a pending criminal case. In this instance, however, the respondent’s course of conduct consisted of numerous *ex parte* communications with one female criminal defendant who had appeared before him, culminating in a meeting at night initiated by the respondent during which he made sexual advances toward her. The judge also made attempts to obtain sexual favors from a second female defendant who had appeared before him and was involved in matters subject to further action by the court. In addition to findings concerning these instances, the recommendation included a finding relating to respondent’s presiding over a session of court at which his own traffic case was disposed.

For his conduct in failing to recuse himself in proceedings concerning his own case, the Commission recommended that Judge Martin be censured. For his sexual advances toward the two female defendants, the Commission recommended the respondent’s

153. *Id.* at 157-58, 250 S.E.2d at 918.
154. *Id.* at 158, 250 S.E.2d at 919.
155. *Id.* at 156, 250 S.E.2d at 917.
157. *Id.*
removal. The Commission’s findings and recommendation for censure was adopted by the Court without reaching the question of whether such conduct alone would amount to willful misconduct in light of his earlier censure by the Court. In adopting the Commission’s findings with regard to the respondent’s conduct in relation to the two female defendants and accepting its recommendation for removal, the Court rejected respondent’s argument that such conduct was completely unrelated to his judicial office and therefore did not constitute willful misconduct in office. First, it found that the respondent had “pursued a course of conduct which reflects at least a reckless disregard for the standards of his office”; second, it referred to evidence in the record that the respondent intended some exchange of favors with these women; finally, it noted its previous censure of the respondent. Thus, by applying the standards expressed in Peoples, the Court decided that removal was warranted because the respondent’s conduct constituted willful misconduct in office on its face and because it represented the respondent’s “persistence in following a course of conduct detrimental to the judicial office.”

Through its decisions regarding recommendations of the Commission, the Court has provided guidance as to what actions constitute improper judicial conduct and under what circumstances a judge might expect to be censured or removed from office for such conduct. At the same time, the Court has had to confront procedural, jurisdictional, and constitutional challenges to Article 30 of Chapter 7A of the General Statutes. In each instance, such challenges have been resolved in favor of upholding the soundness and validity of the proceedings under the statutory provisions.


Procedural questions were raised by the respondent in the second Martin case but were uniformly rejected by the Court. First, it was alleged that the Commission had violated its own rules of procedure by failing to afford the respondent an opportunity to present relevant matters as provided by Commission Rule 7(b). In rejecting this argument, the Court found no violation and held that

158. Id. at 311, 275 S.E.2d at 418.
159. Id. at 316, 275 S.E.2d at 421.
160. Id. at 316-18, 275 S.E.2d at 421-22.
161. Id. at 318, 275 S.E.2d at 422.
even if such a violation had occurred, such a procedural irregularity would not negate the entire proceeding unless the respondent could show some actual prejudice resulting from the irregularity since the provisions of Rule 7(b) go beyond the requirements of due process. The Court also rejected the respondent’s contention that the Commission’s appointment of a fulltime employee of The North Carolina State Bar as special counsel violated the provisions of G.S. § 7A-377(b). In construing the language of the statute in question, the Court construed the word “employ” to mean “use” or “make use of” since respondent’s narrower definition would defeat the Legislature’s intent to provide the Commission with adequate powers to enable the Commission to effectively carry out its responsibilities.

Both the second Martin case and the Peoples case have raised jurisdictional issues. In the second Martin case, the respondent asserted, without citing any authority, that since his conduct with one of the female defendants occurred in a previous term of office, he could not be subjected to proceedings before the Commission on the basis of such conduct. In overruling this exception, the Court noted that North Carolina’s Constitution and statutes provide for disqualification from holding further judicial office as a consequence of removal and that the conduct in question was not public knowledge at the time of respondent’s re-election. The existence of these factors distinguished the respondent’s case from those lines of authority which might otherwise have supported his contention and influenced the Court to uphold the Commission’s consideration of evidence relating to the conduct. However, even if the Court had held in the respondent’s favor on this point, it appears the ultimate result would have remained unchanged in light of the other incidents of misconduct contained in the Commission’s recommendations and supported by clear and convincing evidence.

Of greater substance and import was the jurisdictional issue raised in In re Peoples. There the respondent, after being notified of the preliminary investigation initiated by the Commission, tendered his letter of resignation as a district court judge to the Governor who accepted it with an effective date of 1 February

166. Id. at 318-19, 275 S.E.2d at 422-23.
1978. On 30 January 1978, two days prior to the effective date of Judge Peoples' resignation, the respondent was served with the notice of formal proceedings instituted by the Commission and the formal complaint specifying the charges against him. Thus, the circumstances involved presented the question of whether the Commission had jurisdiction to proceed against a judge who had vacated office and, if so, whether the proceedings were rendered moot by Judge Peoples' resignation. In upholding the validity of the proceedings, the Court initially determined that the proceedings against Judge Peoples commenced with filing of the formal complaint and service of the notice of formal proceedings and complaint on him and that the Commission's jurisdiction attached at that point, a point which occurred at a time when the respondent was still a district court judge. Furthermore, the Commission and the Court retained jurisdiction because once jurisdiction attached, it was not ousted by the respondent's resignation, but continued throughout the course of proceedings under G.S. § 7A-375, et seq., which would not be concluded until the Court made its final order. Finally, since G.S. § 7A-376 imposes sanctions against a judge in addition to removal, the respondent's resignation from office did not render the proceedings moot.

Perhaps most significant are the Supreme Court's determinations with respect to the constitutionality of disciplinary proceedings under the Commission system. Fortunately, favorable decisions on constitutional questions raised in other jurisdictions with similar procedures have been available to guide the Court in its decisions on such issues.

Surprisingly, in In re Crutchfield, the first recommendation to reach the Supreme Court from the Commission, the respondent did not raise any constitutional objections to Commission proceedings under the applicable statutory authority. However, Justice Lake did raise several due process and equal protection issues in his dissent in Crutchfield and concluded that the constitutional deficiencies of Article 30 of Chapter 7A of the General Statutes rendered proceedings thereunder a nullity. He questioned without discussion the propriety of the Legislature's enactment of stat-

168. Id. at 144-45, 250 S.E.2d at 910.
169. Id. at 146-47, 250 S.E.2d at 911-12.
170. Id. at 150, 250 S.E.2d at 914.
172. Id. at 605, 223 S.E.2d at 827 (dissenting opinion).
utory provisions relating to the Commission prior to ratification of the amendment to N. C. Const. art. IV, § 17;\footnote{173} he argued that the equal protection guarantees of Article I, § 19 of the Constitution of North Carolina and the Fourteenth Amendment of the Constitution of the United States were violated by the broad discretion vested in the Commission to determine what sanction to recommend;\footnote{174} and he asserted that the due process protections of Article I, § 19 of the Constitution of North Carolina and the Fourteenth Amendment of the Constitution of the United States were violated by the confidentiality of the Commission’s proceedings, the combination of investigative, prosecutorial, and fact-finding functions in the Commission, the unlimited authority vested in the Commission to prescribe its own rules of procedure, and the vagueness of the phrase “conduct prejudicial to the administration of justice that brings the judicial office into disrepute.”\footnote{175}

The majority opinion in \textit{Crutchfield} was unresponsive to Justice Lake’s concerns, however, and it was not until \textit{In re Nowell}\footnote{176} that such challenges were raised and argued by a respondent and addressed by the Court. In rejecting each of the respondent’s challenges and upholding the constitutionality of Commission proceedings, the Court established the following principles:

The enactment of Article 30 of Chapter 7A of the General Statutes by the legislature prior to ratification of the amendment to Article IV, § 17 of the Constitution of North Carolina was not unlawful because it was passed in anticipation of an amendment which authorized it and its effect was made contingent upon ratification of the amendment.\footnote{177}

The legislature’s enactment of G.S. 7A-375, \textit{et. seq.}, was not an unconstitutional delegation of its legislative authority to an administrative agency, the Judicial Standards Commission, since only the authority to make factual determinations in applying the provisions of Article 30 was delegated to the Commission and such delegation is lawful.\footnote{178}

The provisions of Article 30 do not violate equal protection guarantees because the legislature intended the North Carolina

\footnotesize{173. Id. 
174. Id. at 608, 223 S.E.2d at 829. 
175. Id. at 610-11, 223 S.E.2d at 830-31. 
177. Id. at 242, 237 S.E.2d at 251. 
178. Id.}
Code of Judicial Conduct to provide a guide to the Commission in applying the statute, and the legislature is not required to establish statutory guidelines for the Commission’s exercise of its investigative powers.\(^{179}\)

The combination of investigative and judicial functions within the Commission does not violate due process because the Commission can only recommend censure or removal, and it is the Court which actually imposes any sanctions.\(^{180}\)

The phrases “wilful misconduct in office” and “conduct prejudicial to the administration of justice which brings the judicial office into disrepute” are not unconstitutionally vague.\(^{181}\)

Another constitutional question was raised by the respondent in *In re Martin*.\(^{182}\) There it was argued that the Supreme Court was without original jurisdiction to censure or remove the respondent because the jurisdiction of the Court as defined by Article IV, § 12 of the Constitution of North Carolina was not expressly expanded by the amendment to Article IV, § 17 thereof. The Court held, however, that although Article IV, § 17(2) of the Constitution of North Carolina “does not expressly authorize the Legislature to confer original jurisdiction upon the Supreme Court over the censure and removal of judges, [b]y clear implication, it grants to the Legislature [such authority].”\(^{183}\) The Court also pointed out that ratification of the amendment was done with knowledge that it would make effective legislation granting jurisdiction to the Court not elsewhere authorized and that the Court’s exercise of such jurisdiction did not violate the separation of powers doctrine.\(^{184}\)

Finally, the Court rejected constitutional challenges raised in *In re Peoples*\(^{185}\) to the provisions of G.S. § 7A-376\(^{186}\) which impose the sanctions of disqualification from holding further judicial office and loss of retirement benefits as consequences of removal for other than mental or physical incapacity. The Court held that in imposing the sanction of loss of retirement benefits, the legislature acted within its authority to provide by law for the retirement of

---

179. *Id.* at 242-44, 237 S.E.2d at 251-52.
180. *Id.* at 244, 237 S.E.2d at 252.
181. *Id.* at 245, 237 S.E.2d at 251.
183. *Id.* at 299, 245 S.E.2d at 771.
184. *Id.* at 300, 245 S.E.2d at 771-72.
judges granted by Article IV, § 8 of the Constitution of North Carolina. In upholding the sanction of disqualification from holding further judicial office, the Court followed two lines of reasoning:

1) Article IV, § 17(2) of the Constitution of North Carolina was intended to provide a workable alternative to the cumbersome and inefficient impeachment and address provisions of the constitution and not to provide an alternative to the remedies of those provisions which include disqualification from office in the case of impeachment. Because the statute construing the amendment was conceived and enacted by the same legislature that proposed the amendment, the legislature must have believed the disqualification provisions of G.S. § 7A-376 were authorized by the amendment.

2) An adjudication of “wilful misconduct in office” under G.S. § 7A-376 is equivalent to an adjudication of “malpractice in any office” under Article VI, § 8 of the Constitution of North Carolina and, therefore, can be similarly sanctioned, i.e., by disqualification from office.

V. Conclusion

Proceedings under North Carolina's judicial disciplinary system as embodied in the Judicial Standards Commission have withstood various challenges to their validity. This in turn reflects favorably on the soundness of the system and its success in holding judges accountable for misconduct or for impaired performance of their duties and in meeting the objective of maintaining public confidence in the judiciary.

A judge must be honest and independent. This essential independence of the judiciary should not be jeopardized or compromised by the need to hold judges accountable for their misconduct. The Commission has the difficult and delicate task of weighing and balancing these two competing and interdependent goals. Inevitably, there arises the question of whether the Judicial Standards Commission has performed its balancing act successfully.

Answering in the negative are the judges who have been reprimanded, censured, or removed; those who have been subjected to investigation but feel there was no probable cause for doing so; the complainants irritated by a judge's decision and who have had

188. Id. at 161-64, 250 S.E.2d at 920-21.
189. Id. at 164-66, 250 S.E.2d at 921-23.
their charges dismissed; the news media who find it much easier to criticize the Commission for confidentiality than to seek relaxation by the Legislature of the law; and the many who are convinced that the Commission is a biased bureaucratic body that is incapable of effectively policing the judiciary. On the other hand, since those who have served on the Commission should recuse themselves, those answering in the affirmative, if any, are unknown. Nevertheless, it is submitted that the Commission, with a judicial misconduct umbrella in one hand and a judicial independence umbrella in the other, is still balancing on the tightrope, precariously but persistently.