



IDAHO JUDICIAL COUNCIL

Annual Report

FY 2004

State of Idaho
Judicial Council
 P.O. Box 9495
 Boise, Idaho 83707
 Telephone: (208) 334-5213
 Facsimile: (208) 383-9516
 Email: ijc@ijc.state.id.us
 Website: www2.state.id.us/ijc

INTRODUCTION:

The Idaho Judicial Council, by enactment of Title I, Chapter 21, of the Idaho Code, was created in 1967. Drawing from the experiences of other states, the legislature provided in Idaho Code Section 1-2102 a broad range of functions

Today the Judicial Council is charged to:

- Conduct studies for the improvement of the administration of justice;
- Make reports to the Supreme Court and Legislature at intervals of not more than two years;
- Submit to the Governor the names of not less than two nor more than four qualified persons for each vacancy in the office of Justice of the Supreme Court, Judge of the Court of Appeals, or District Judge, one of whom shall be appointed by the Governor;
- Recommend the removal, discipline and retirement of judicial officers (including members of the Industrial Commission);
- Perform such other duties as might be assigned by law.

Members of the Judicial Council serve without salaried compensation for their services. Members, other than judges, receive only a daily honorarium for each day the Council meets and reimbursement for their actual expenses, pursuant to Idaho Code Section 1-2104. The Judicial Council utilizes the services of a part-time Executive Director, but retains no permanent or full-time staff.

Ordinarily, the Council meets approximately three to four times per year or, as needs arise. In an effort to operate within the Council's budgetary allowance, many matters are disposed of by telephone conference call or by mail and meetings scheduled in conjunction with interviews for judicial vacancies.

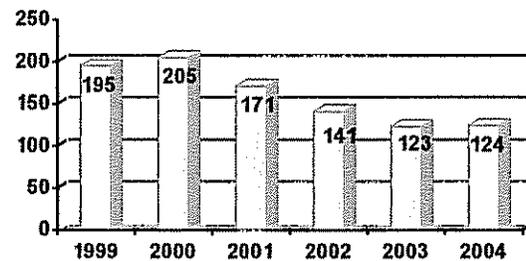
JUDICIAL NOMINATIONS:

There was one (1) vacancy in the 2004 calendar year. The following table summarizes the screening process in that case.

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
Fifth Judicial District James J. May	3	2	Robert J. Elgee

DISCIPLINARY ACTIVITIES:

COMPLAINTS RECEIVED



Of the 124 complaints received in 2004, sixty-two (62) were not verified as required by Idaho law. When a complaint is not verified, the Judicial Council contacts the complainant to explain verification and offers to assist in the verification process. Of the sixty-two (62) verified complaints, forty-seven (47) complaints were dismissed after having been reviewed and discussed by the Judicial Council and a determination made that there was no factual basis for the complaint or the facts did not constitute a violation of the Code of Judicial Conduct. Thirteen (13) initial inquiries and one (1) preliminary investigation were conducted. One (1) case is still pending disposition.

An initial inquiry consists of obtaining more facts concerning the complaint, sending the complaint to the judge and receiving a response from the judge. A preliminary investigation is a full investigation, which includes a review of the court record or transcripts and interviewing witnesses.

In the fourteen (14) cases in which there were initial inquiries or preliminary investigations, thirteen (13) were dismissed. The Judicial Council took remedial action in one (1) of the cases pursuant to Judicial Council Rule 28(c) which permits the Judicial Council to remedy issues with a judge without filing formal

charges. In that case, members of the Judicial Council met with the judge and admonished the judge to ensure that his courtroom demeanor and temperament complied with the requirement that judges treat litigants, attorneys and witnesses with respect and courtesy.

In one case which was carried over from 2003, formal disciplinary charges were filed. Following a hearing on the charges, the judge resigned from the bench.

Nature of Complaints	Occurrences
Appearance of Impropriety	0
Bias/Prejudice/Discrimination	53
◆ Conduct Prejudicial to Administration of Justice	2
Conflict of Interest	1
Conspiracy	0
◆◆ Erroneous Decision/Error of Law	52
Ex Parte Communication	4
Excessive Use of Alcohol/Drugs	0
Failure to Disqualify	3
Failure to Perform Duties	4
Improper/Unreasonable Delay	3
Improper Sentence	10
Abuse of Power	0
Refused to Hear Entire Case	0
Rude and Discourteous Treatment/Lack of Judicial Temperament	16
Violation of Code of Judicial Conduct	1
Violation of Fourth Amendment	0
Violation of Idaho Code 59-502	0
◆◆ Unknown or General Dissatisfaction	47

Many complaints have more than one allegation made against the judge or judges.

◆ Examples of complaints alleging Conduct Prejudicial to the Administration of Justice include matters such as: misplacing files by the clerk's office, allowing an attorney to enter into a stipulation without the approval of his client, allowing an in-court demonstration of a battery on the victim, making insensitive comments, and alleging that a decision of another judge was politically motivated.

◆◆ Many of the complaints allege that the judge committed errors of law such as ruling in favor of one of the parties, or erroneously allowing or disallowing the admission of evidence, or erroneously granting or denying a continuance. Reviewing or correcting an error of law is not within the jurisdiction of the Judicial Council. In those situations, complainants are notified in writing that their complaint involves an error of law and must be pursued through the appellate court process.

◆◆◆ Some complainants allege general dissatisfaction with the handling of a case or the legal system but fail to provide sufficient information to enable the Judicial Council to determine the exact nature of the complaint or whether the complaint is against a judge. Many times the complaint is actually about the police, conduct of the prosecutor's office or the public defender's office.

Judge Type	No. of Judges	No. of Complaints Rec'd
District Judges	39	37
Magistrate Judges	83	68
Appellate Court Judges	3	0
Supreme Court Justices	5	1
Senior/Plan B Judges	36	6
Judge Not Identified or Other Entities Not Under Judicial Council Jurisdiction		19

Some complaints may have more than one judge named.

PERFORMANCE EVALUATIONS:

The Judicial Council has found that when individuals are appointed to the bench, they become somewhat isolated and do not receive feedback on their performance as a judge.

Judicial Performance Evaluations provide the opportunity to receive feedback on the way judges perform their judicial duties. That information is provided to the judges in order to assist them in improving their judicial skills and abilities. It is not used for disciplinary purposes.

The Judicial Council Judicial Performance Evaluation Pilot Project was extended for another year. Eighteen (18) judges have volunteered to participate. The judges are very positive about the Pilot Project and the feedback that they receive.

ETHICS OPINIONS:

The Judicial Council provides guidance to judges on ethics questions. In 2004, approximately 50 informal ethics opinions were issued.

Members of the Idaho Judicial Council:

Honorable Gerald F. Schroeder
Chief Justice and Ex-Officio Chairman

Dennis M. Davis
Vice-Chairman

Sherry Krulitz
Secretary

Hon. N. Randy Smith
District Judge

Helen McKinney

William Parsons

J. Philip Reberger

Hon. Thomas Borresen

Robert G. Hamlin