

# SOUTH CAROLINA

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Report on the Judicial Regulation System

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September 2008

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Sponsored by the  
American Bar Association  
Standing Committee on  
Professional Discipline

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**SOUTH CAROLINA JUDICIAL DISCIPLINE SYSTEM  
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## I. INTRODUCTION

### **A. Judicial Independence and the Judicial Discipline Consultation Program**

The maintenance of an independent judiciary is vital to the success of our democracy. As noted by the Report of the ABA Commission on the 21<sup>st</sup> Century Judiciary:

[A]n independent judiciary guarantees every citizen access to a branch of government designed to protect the rights and liberties afforded by federal and state constitutions and to resolve disputes peacefully and impartially. Fundamental to this unique role of the courts is the necessity for the judiciary to be distinct from the other two branches of government, functioning independently....<sup>1</sup>

Judicial independence, as traditionally understood, refers to the ability of judges and the courts to render decisions based on the Constitution, statutes, court rules, precedent and common law principles without interference by the other branches of government. Under our system of government, judges must be able to render decisions in accordance with the law even though their decisions may sometimes be unpopular.

However, judges are not independent of accountability. Without judicial accountability, the maintenance of judicial independence is jeopardized.

Judicial accountability is absolutely essential to preserving public trust and confidence in our courts. Judges are entrusted to uphold the law independently and impartially. When they violate that trust, it is vital that processes be in place to correct the problem... It all but goes without saying that to be effective, codes of judicial conduct must be enforced.<sup>2</sup>

Judicial conduct commissions, with due process protections and sophisticated procedural rules, are the mechanisms which preserve the independence of the judiciary by ensuring accountability for adherence to the Code of Judicial Conduct.<sup>3</sup> In all states and the District of Columbia judicial discipline falls under the judicial branch of government, regardless of how a judicial conduct commission was enacted. In South Carolina, the General Assembly also bears some responsibility for ensuring that the State's judges are accountable for their conduct, as the legislative branch of government selects most of them.

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<sup>1</sup> American Bar Association (2003). Report of the Commission on the 21<sup>st</sup> Century Judiciary, *Justice in Jeopardy*, at iii., <http://www.abanet.org/judind/jeopardy/pdf/report.pdf>.

<sup>2</sup> Id. at 57 and 58.

<sup>3</sup> See, e.g., James J. Alfini, Shailey Gupta-Brietzke, and James F. McMartin, IV., *Dealing With Judicial Misconduct in the States: Judicial Independence, Accountability, and Reform*, 48 S. Tex. L. Rev. 889 (Summer 2007); and Cynthia Gray, *The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability*, 32 Hofstra L. Rev. 1245 (Summer 2004).

The American Bar Association has long recognized the connection between preserving judicial independence and the need for judges to be accountable for their conduct. In February 1978, the American Bar Association adopted the *Standards Relating to Judicial Discipline and Disability Retirement* as a national model for enforcement of state judicial conduct codes. To assist jurisdictions in the implementation of these standards, in June 1979, the ABA Standing Committee on Professional Discipline and the ABA Judicial Administration Division developed *Model Rules for Judicial Discipline and Disability Retirement*.

In 1990 (and again in 2007), the American Bar Association significantly revised its *Model Code of Judicial Conduct*. In February 1990, the Discipline Committee and the Judicial Administration Division created a Joint Subcommittee on Judicial Discipline. The Joint Subcommittee had the following goals: (1) to assure conformity with the new *ABA Model Code of Judicial Conduct*; (2) to ensure prompt and fair discipline for judges; (3) to ensure the protection of the public and the judiciary; (4) to protect the independence of the judiciary; and (5) to establish a model for states to use as a resource to establish improved judicial discipline systems. The Joint Subcommittee's proposals were submitted to the ABA House of Delegates, and on August 9, 1994, the House adopted the new *ABA Model Rules for Judicial Disciplinary Enforcement* (MRJDE). The South Carolina Supreme Court largely adopted the provisions of the ABA MRJDE in 1997.

To help states strengthen accountability and maintain independence, the Standing Committee on Professional Discipline offers judicial discipline system consultations. These reviews involve study of a jurisdiction's entire judicial discipline system by a team consisting of representatives of the Discipline Committee, experienced disciplinary counsel, and at least one judge.<sup>4</sup> The consultation team conducts extensive interviews with judges, lawyers and non-lawyers responsible for and affected by the judicial discipline system, including members of the judicial conduct commission, commission staff, disciplinary counsel, members of the court with disciplinary jurisdiction, former respondent judges, counsel for respondent judges, complainants, and independent judges. This process provides the team with a broad cross-section of views about the disciplinary process. The team also examines case records and administrative files.

The final consultation report issued by the Committee is designed to assist those responsible for the administration of the judicial disciplinary process to improve their system by providing constructive suggestions and recommendations based upon the team's study, its collective knowledge and experience, and the ABA MRJDE. While the final report is based upon those Model Rules, the team and Committee do not utilize a checklist approach. They do not recommend changes in local procedures that are functioning well.

## **B. Persons Interviewed and Materials Reviewed for South Carolina**

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<sup>4</sup> The South Carolina judicial discipline system consultation team included a sitting judge and former judge.

The South Carolina Supreme Court invited the ABA Standing Committee on Professional Discipline to conduct a review of its lawyer and judicial discipline systems. The consultation team conducted the on-site portion of the consultations in March 2008. Short biographies of the team members are attached to this Report as Appendix A.

Interviewees included the Disciplinary Counsel and her judicial discipline staff, the Senior Assistant Attorney General and investigators assigned to work in Disciplinary Counsel's office, Attorneys to Assist, members of the Commission on Judicial Conduct (judge, lawyer and non-lawyer magistrate, and public members) respondents, respondents' counsel, complainants and members of the South Carolina legislature. The team spoke with the South Carolina State Bar Association's President, President-Elect, and Executive Director. The team also met with the Justices of the South Carolina Supreme Court.

The team reviewed documentation relating to the judicial regulatory system in South Carolina that included, but was not limited to, the Code of Judicial Conduct, Rules for Judicial Disciplinary Enforcement, annual reports, and caseload processing information.

The ABA Standing Committee on Professional Discipline is grateful to all the participants in the consultation for their time, effort and candor. The Committee is impressed with the commitment of the Court, Disciplinary Counsel's Office, and system volunteers. As noted below, the Court, on its own initiative, has begun implementing changes to its judicial discipline system since the team's visit that will benefit the public, the profession, and the judiciary. The Court's thoughtful approach to making these changes in the face of outside pressures is laudable. Change is not always easy, and the Discipline Committee commends the Court and all participants in the South Carolina judicial disciplinary system for their careful consideration of how to further improve the system. The Discipline Committee hopes that the recommendations contained in this Report will assist the Court in making continued improvements to the South Carolina judicial disciplinary system.

## II. OVERVIEW

### **A. Strengths of the South Carolina Judicial Discipline System**

This Report is designed to provide constructive suggestions based upon the ABA Standing Committee on Professional Discipline's collective knowledge and experience in judicial regulation and the *ABA Model Rules for Judicial Disciplinary Enforcement*. In order to provide a balanced assessment of South Carolina's judicial disciplinary system, its strengths should be recognized. The following is not an exhaustive description of those strengths.

That the judiciary remains largely and responsibly self-governing is critical to preserving its integrity and independence. The South Carolina Supreme Court understands this. The Court's abiding interest in improving the State's judicial discipline procedures evidences its commitment to maintaining accountability and thus enhancing public trust in the judiciary. The Court's concern for improving the system is evident from its invitation to the Committee to conduct the consultation, the thoughtful suggestions for improvements, and the changes that have been implemented since the team's visit. A particularly strong indication of the Court's commitment to judicial accountability is the fact that the South Carolina Rules for Judicial Disciplinary Enforcement provide that judicial disciplinary proceedings become public thirty days after the respondent judge files his or her answer to the formal charges. Not only may the public have access to the pleadings filed, but it may attend the hearings.<sup>5</sup>

The Court has taken other steps to increase transparency of and public access to the South Carolina courts system. For example, the Court has devoted significant time and resources to creating an internet based public information and caseload management system. According to the Chief Justice, by the spring of 2008, 57% of State's court caseloads was managed by this primarily grant funded system.<sup>6</sup> These actions demonstrate support for public access and understanding of the operation of the judiciary as a vital component of accountability. As noted below, the consultation team recommends (and the Court has indicated that it supports) the creation of a separate new web site for its disciplinary agency as part of the initiative to increase public outreach and accessibility.

Disciplinary Counsel's office also uses sophisticated case management software. The "Time Matters" system allows Disciplinary Counsel to track all aspects of pending matters, to retrieve related documents, diary matters for deadlines and maintain templates for letters, pleadings and other documents. Disciplinary Counsel demonstrated this impressive system for the consultation team.

The State of South Carolina has taken steps to enhance the qualifications required to become a magistrate, a position which can be held by a non-lawyer. Previously, only a high school

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<sup>5</sup> Rule 12 (b), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>6</sup> Honorable Jean Hofer Toal, Chief Justice, South Carolina Supreme Court, State of the Judiciary 2008 (February 13, 2008).

education was required. As of 2005, candidates for election to magistrate positions must have a four year college degree.<sup>7</sup> Additionally, magistrate candidates are required to pass a certification test and complete continuing judicial education courses.<sup>8</sup>

The team was advised by interviewees, including complainants, that the South Carolina judicial discipline system works well overall. Complainants are kept apprised of the status of matters at all stages in the proceedings, and are provided with explanations of the Commission's actions. Investigations and prosecutions handled by the judicial discipline system generally proceed in a timely manner, and respondent judges are afforded appropriate due process protections.

The South Carolina Rules for Judicial Disciplinary Enforcement contain provisions to handle, on an expedited basis, cases where judges who have been convicted of serious crimes or pose a substantial threat of serious harm can be interimly suspended.<sup>9</sup> These provisions protect the public and the integrity of the judiciary. The South Carolina Rules also provide for discipline on consent.<sup>10</sup> The use of discipline on consent allows the system and the respondent judge to save time and conserve resources.

## **B. Components of the South Carolina Judicial Discipline System**

The Supreme Court of South Carolina possesses the authority to regulate the judiciary in the State. The Court has adopted Rules for Judicial Disciplinary Enforcement, based upon the *ABA Model Rules for Judicial Disciplinary Enforcement* (MJDE). The Court's Rules set forth detailed procedures for resolving allegations that a judge has committed misconduct or suffers from a condition that adversely affects his or her ability to perform judicial duties.<sup>11</sup> These rules apply to all judicial officers (including lawyers and non-lawyers), but not administrative law judges, arbitrators and mediators.<sup>12</sup> Components of South Carolina's judicial discipline mechanism include the Commission on Judicial Conduct, Investigative Panels of the Commission, Hearing Panels, Disciplinary Counsel's Office and the Court.

### **1. The South Carolina Judiciary**

South Carolina has a unified court system. It is one of two states where judges are selected by the legislative branch of government. For the Supreme Court, Appellate Court, Circuit Court, Family Court and Administrative Court, the Judicial Merit Selection Committee screens applicants and selects three candidates to run for each available vacancy. The Merit Selection Committee is comprised of ten members, including two public members. The election of

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<sup>7</sup> S.C. Code Ann. § 22-1-10 (2007).

<sup>8</sup> Id.

<sup>9</sup> Rules 16 and 17, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>10</sup> Rule 21, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>11</sup> Rule 1, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>12</sup> Rule 2, South Carolina Rules for Judicial Disciplinary Enforcement.

judges to fill vacancies is conducted by a joint session of the House and Senate. Magistrates are appointed by the Governor with the advice and consent of the Senate.<sup>13</sup> Municipal court judges are appointed by the council of each municipality.<sup>14</sup> It is one of approximately twenty-one states where non-lawyers can serve as judicial officers. These non-lawyer judicial officers are subject to South Carolina's Code of Judicial Conduct.

The South Carolina judiciary receives the bulk of its funding from the General Assembly. In 2008, it is estimated that the court system's budget will be approximately \$57,000,000, of which \$36,000,000 is provided by the legislature.<sup>15</sup> Monies from fees, fines, and grants make up the remainder of the budget. The budgets of the lawyer and judicial discipline systems are combined because both of these functions operate from one agency. The budget for the discipline system for 2007-2008 was \$1,130,754. The Court and the Office of Finance and Personnel of the Judicial Department oversee the discipline system's budget.

### **3. The Office of Disciplinary Counsel**

The Chief Disciplinary Counsel is appointed by and serves at the pleasure of the Court.<sup>16</sup> The Chief Disciplinary Counsel is responsible for hiring his/her staff, including lawyers, investigators and support staff, and for receiving, screening, investigating, and prosecuting complaints made against both judges and lawyers. In addition to the Chief and Deputy Disciplinary Counsel, at the time of the team's visit staff assigned to handle judicial discipline matters included one part-time Assistant Disciplinary Counsel to conduct screening and preliminary investigations, and one full time Senior Assistant Attorney General on loan to the Office to conduct full investigations and prosecutions. The Senior Assistant Attorney General also conducted full investigations and prosecutions in lawyer discipline cases when the Office of Disciplinary Counsel had a conflict of interest. One administrative assistant and investigators on loan from the Office of the Attorney General were assigned to judicial discipline cases. These investigators also worked on lawyer discipline cases. Since the time of the on-site portion of the consultation, the involvement of the Office of the Attorney General has ceased. All judicial disciplinary investigations and prosecutions are now being handled by the Office of Disciplinary Counsel.

The Assistant Disciplinary Counsel screens out complaints against judges that fall outside of the jurisdiction of the agency or do not contain allegations which, even if true, would be the basis for discipline.<sup>17</sup> The Assistant Disciplinary Counsel also conducts preliminary investigations of complaints that have not been screened out. However, the Assistant Disciplinary Counsel may not issue an investigative subpoena until such time as an Investigative Panel of the Commission authorizes a full investigation or the Chair of Vice-

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<sup>13</sup> Supra Note 8.

<sup>14</sup> S.C. Code Ann. § 14-25-15 (2007).

<sup>15</sup> Supra Note 7.

<sup>16</sup> Rule 5 (a), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>17</sup> Rule 19 (a), South Carolina Rules for Judicial Disciplinary Enforcement.

Chair of the Commission determines that exigent circumstances warrant its issuance.<sup>18</sup> If requested, a judge who is the subject of a complaint must file a response within fifteen days of notice from Disciplinary Counsel.<sup>19</sup> At this point, Disciplinary Counsel may, if needed and as done in lawyer discipline cases, utilize Attorneys to Assist (ATAs). ATAs are appointed by the Court to help Disciplinary Counsel perform their duties.<sup>20</sup> The team was advised that Disciplinary Counsel rarely use ATAs in judicial disciplinary cases. Upon the conclusion of a preliminary investigation, Disciplinary Counsel may dismiss the matter or recommend that an Investigative Panel of the Commission authorize a full investigation.<sup>21</sup>

Upon receiving authorization to conduct a full investigation, Disciplinary Counsel must notify the judge against whom the complaint has been filed of the specifics of the grievance and the provisions of the Code of Judicial Conduct that allegedly have been violated.<sup>22</sup> The judge must respond within thirty days.

Disciplinary Counsel cannot dismiss a matter if, after full investigation, a determination is made that there is an insufficient basis to proceed further. Disciplinary Counsel must make a recommendation to an Investigative Panel to do so. Disciplinary Counsel may also recommend that an Investigative Panel approve the filing of formal charges, issue an admonition or letter of caution, or stay the matter.<sup>23</sup> Prior to the Investigative Panel rendering a decision, the judge may request, and Disciplinary Counsel may require, an appearance before Disciplinary Counsel to answer questions under oath.<sup>24</sup>

If an Investigative Panel determines that the judge has committed misconduct but a public sanction is not warranted, it may advise the judge that it intends to issue a confidential admonition.<sup>25</sup> Unless the judge files objections to the issuance of this sanction, it will be imposed. If the judge objects, Disciplinary Counsel is required to file formal charges.

Disciplinary Counsel is responsible for preparing and filing with the Commission formal charges against a judge. The charging document must provide the judge with adequate notice of the alleged misconduct or incapacity.<sup>26</sup> The respondent judge is required to answer those charges within thirty days after service.<sup>27</sup> A Hearing Panel may extend the time for filing an answer. If a judge fails to answer, the Hearing Panel may deem the allegations of the formal charges admitted.<sup>28</sup>

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<sup>18</sup> Rule 19 (b), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>19</sup> Id.

<sup>20</sup> Rule 5 (c), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>21</sup> Id.

<sup>22</sup> Rule 19 (c), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>23</sup> Rule 19 (d), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>24</sup> Supra Note 36.

<sup>25</sup> Rule 19 (d)(3), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>26</sup> Rule 22, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>27</sup> Rule 23, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>28</sup> Rule 24, South Carolina Rules for Judicial Disciplinary Enforcement.

Disciplinary Counsel and the respondent judge are required to exchange witness lists and all other non-privileged evidence.<sup>29</sup> Disciplinary Counsel must also disclose all exculpatory evidence.

Caseload statistics for the Commission on Judicial Conduct indicate that, for the fiscal year 2005-2006, the Commission received 295 complaints and had 49 pending from the previous year. Of those 344 complaints, 172 were screened out due to a lack of jurisdiction, 50 were dismissed by Disciplinary Counsel after a preliminary investigation, and another 30 were dismissed by an Investigative Panel. For the fiscal year 2006-2007, the Commission received 258 complaints and had 46 pending from the previous year. Of those 304 complaints, 157 were screened out for a lack of jurisdiction, Disciplinary Counsel dismissed 57 after a preliminary investigation, and Investigative Panels dismissed 17 matters.

The dismissal rates by Disciplinary Counsel and the Commission are not inconsistent with those in other states.<sup>30</sup> Also, consistent with other states, the majority of complaints filed against judges in South Carolina are made by litigants/defendants or their friends and relatives. For fiscal year 2005-2006, litigants/defendants and their friends/family filed 257 of the 295 new complaints. During fiscal year 2006-2007, litigants/defendants and their friends/family made 225 of the 258 new complaints received by the agency.

The single most complained against type of judge are the magistrates. Magistrates were subject to 115 complaints in fiscal year 2005-2006, and 106 the following year. Most of these complaints are made against non-lawyers holding that position (98 of the 106).

### **3. The Commission on Judicial Conduct**

The Commission on Judicial Conduct consists of twenty-four members appointed by the Court, one of whom serves as chair and another as vice-chair.<sup>31</sup> Fourteen members are circuit court and family court judges or masters-in-equity. Four members are judges from the magistrate, municipal or probate courts; four are active members of the South Carolina Bar who have never served in a judicial office; and the remaining two are public members. The Court appoints Commission members for four year terms, and members are eligible for reappointment.

In addition to the investigatory and adjudicatory duties described below, the Commission is responsible for adopting its own procedural rules for Court approval, for maintaining statistics regarding the Commission's operations, and preparing an annual report for the Court and public.<sup>32</sup> The Commission is required to promote the existence of the judicial disciplinary

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<sup>29</sup> Rule 25, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>30</sup> Gray, *Supra* Notes 3 and 4.

<sup>31</sup> Rule 3, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>32</sup> Rule 4, South Carolina Rules for Judicial Disciplinary Enforcement.

system to the public and to make available the final disposition of cases where public discipline was imposed.<sup>33</sup> Information about the Commission on Judicial Conduct is available on the website for the South Carolina judiciary, but that entity does not have a stand-alone website.<sup>34</sup>

The team was advised that a meeting of the full membership of the Commission on Judicial Conduct has not taken place for several years. The Commission performs its investigatory and adjudicatory duties while acting as Investigatory and Hearing Panels appointed by the Chair.<sup>35</sup> Each Investigative and Hearing Panel consists of: (1) three judges from the circuit court, family court or masters-in equity; (2) one magistrate, municipal court or probate judge; and (3) one lawyer member.<sup>36</sup> If a panel is assigned to act in an investigative capacity, the Chair adds a public member and the Vice-Chair or himself/herself to the roster so that there are a total of seven members. Public members cannot be assigned to serve on a Hearing Panel, although a non-lawyer magistrate may serve in that capacity. Members cannot sit on an investigative and hearing panel for the same matter.<sup>37</sup>

The Investigative Panel is charged with reviewing the recommendations of Disciplinary Counsel after that Office completes its preliminary investigation. The Investigative Panel may dismiss a matter or authorize a full investigation.<sup>38</sup> The Investigative Panel also reviews Disciplinary Counsel's recommendations after the completion of a full investigation. The Investigative Panel can adopt, reject or modify Disciplinary Counsel's recommendation to: (1) dismiss a matter; (2) approve the issuance of an admonition, letter of caution or initiation of a deferred discipline agreement; (3) file formal charges; and (4) file a petition to transfer the judge to disability inactive status.<sup>39</sup>

Hearing Panels of the Commission on Judicial Conduct act as the trier of fact in judicial disciplinary proceedings. Their duties include ruling on pre-trial motions, conducting the hearings on formal charges and making findings of fact, conclusions of law and recommendations of sanctions to the Court.<sup>40</sup> The standard of proof in judicial disciplinary proceedings is clear and convincing evidence, and, except as otherwise set forth in the Rules, the South Carolina Rules of Evidence for non-jury civil matters and the South Carolina Rules of Civil Procedure apply.<sup>41</sup> Members of Hearing Panels are required to recuse themselves in any matter in which recusal would be required under the Code of Judicial Conduct.<sup>42</sup>

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<sup>33</sup> Id.

<sup>34</sup> <http://www.sccourts.org/>

<sup>35</sup> Rule 4 (b), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Rule 4 (f), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>39</sup> Rule 19 (d) (1) and (2), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>40</sup> Rule 4 (g), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>41</sup> Rules 8 and 9, South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>42</sup> Id.

Hearings are currently conducted at the location of the Office of Disciplinary Counsel. Disciplinary Counsel is responsible for presenting the evidence relating to the formal charges and may call the respondent judge as a witness.<sup>43</sup> Both Disciplinary Counsel and the respondent may present proposed findings and recommendations to the Hearing Panel at the conclusion of the proceedings. The Hearing Panel is required to file its report with the Supreme Court within thirty days after the filing of the transcript of proceedings.<sup>44</sup>

If a complaint is filed against a member of the Commission on Judicial Conduct, the member against whom the complaint is filed cannot participate in the matter.<sup>45</sup> There is currently no separate procedure for handling complaints against members of the Supreme Court.

The Court may also appoint Commission Counsel to advise the Commission on Judicial Conduct and the Commission on Lawyer Conduct and to assist the Hearing Panels of both Commissions in the drafting of decisions, orders and reports.<sup>46</sup> At the time of the consultation team's visit, there was no Commission Counsel. Both Commissions utilized administrative staff from Disciplinary Counsel's Office. However, the Chief Disciplinary Counsel was in the process of recommending that the Court appoint a Commission Counsel. The Court has since approved the filling of that position. The Commission has interviewed lawyers and is in the process of recommending a qualified candidate. The team believes that hiring Commission Counsel will not only provide needed legal assistance to the Commission but will accentuate the separation between Disciplinary Counsel's Office and the adjudicative side of the judicial discipline system. The existence of Commission Counsel will also help alleviate the risk of possible *ex parte* contacts between the two branches of the system.

#### **4. The Supreme Court**

Within thirty days after the Hearing Panel report and recommendation is served upon the respondent judge, Disciplinary Counsel and /or the respondent judge may file exceptions to the findings, conclusions and recommendations to the Court.<sup>47</sup> The Court may remand the matter to the Hearing Panel for further findings if it deems necessary, order additional briefs or oral argument.<sup>48</sup>

The Court is not bound by the Hearing Panel's recommendation and may accept, reject or modify the findings, conclusions and sanction recommendation. At the conclusion of its consideration of a matter, the Court issues a written decision dismissing the case, imposing a

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<sup>43</sup> Rule 26(c), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>44</sup> Id.

<sup>45</sup> Rule 4 (i), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>46</sup> Rule 6, South Carolina Rules for Judicial Disciplinary Enforcement; Rule 6 South Carolina Rules for Lawyer Disciplinary Enforcement.

<sup>47</sup> Rule 27(a), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>48</sup> Rule 27 (c), South Carolina Rules for Judicial Disciplinary Enforcement.

sanction or transferring the judge to disability inactive status. The Court may also assess costs against any judge against whom a finding of misconduct has been made.<sup>49</sup>

In addition to the sanctions noted above, the Court may remove a judge from office, suspend a judge, issue a public reprimand, or a private or public admonition. The Court may also place limitations on the judge's practice or impose any other sanction it deems appropriate.<sup>50</sup> Most sanctions imposed against South Carolina judges are letters of caution, confidential admonitions, and public reprimands. Judges have also been suspended or removed from office. This appears to be consistent with the practice in other states.<sup>51</sup>

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<sup>49</sup> Rule 27 (e), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>50</sup> Rule 7 (b), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>51</sup> Supra Note 4.

### III. RESOURCES, TRAINING, AND OUTREACH

#### **Recommendation 1: The Court Should Oversee Creation of a Formal Annual Budget Process**

##### Commentary

As noted above, the judicial branch receives the majority of its funding from the South Carolina legislature. A portion of these funds, including some monies provided from fees and fines are used for the judicial and lawyer discipline system's budget. Also, a \$50 disciplinary assessment that is part of a lawyer's dues for the State Bar of South Carolina has been in place for four years. The budgets of the lawyer and judicial discipline systems are combined because these functions operate through one umbrella organization. The Office of Finance and Personnel of the Judicial Department sets the salaries for the staff of Discipline Counsel's Office.

The team was not advised of any current specific, significant concerns relating to the finances of the lawyer and judicial discipline systems. However, in order to determine adequate financing for the system well into the future the consultation team recommends the formation of a subcommittee of the Judicial Discipline Commission, consisting of at least the Chair, Vice-Chair, and a public member, to take a more active role in planning and other administrative duties for the adjudicative part of the judicial discipline system. If membership on the subcommittee exceeds three members, the Commission should ensure that public members comprise one-third of that entity.<sup>52</sup> This subcommittee should develop an annual, documented budget process, and submit its proposed budget to the Court.<sup>53</sup> This will help ensure the operational and fiscal independence of the adjudicative branch of the judicial discipline process. The budget should include recommendations for necessary additional staff for the Commission. Accordingly, the Court should amend Rule 4 of the Rules for Judicial Disciplinary Enforcement to reflect these new budgeting duties.

The subcommittee should review relevant case load statistics and consider contacting other states with similar adjudicative staff to help assess future needs. A roster of state judicial disciplinary agencies can be found on the American Judicature Society web site.<sup>54</sup> The National Council of Lawyer Disciplinary Boards may also be a good resource.<sup>55</sup> The organization serves lawyer discipline system adjudicative staff and volunteers to help them effectively and efficiently handle their duties.<sup>56</sup>

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<sup>52</sup> The inclusion of a public member on the subcommittee is consistent with the *ABA Model Rules for Judicial Disciplinary Enforcement* and the consultation team's recommendation that the Commission have one-third public membership. See Recommendation 4, at page 20 of this Report.

<sup>53</sup> Rule 2 (f), ABA Model Rules for Judicial Disciplinary Enforcement.

<sup>54</sup> [http://www.ajs.org/ethics/eth\\_conduct-orgs.asp](http://www.ajs.org/ethics/eth_conduct-orgs.asp)

<sup>55</sup> <http://www.ncldb.org/>.

<sup>56</sup> <http://www.ncldb.org/members.htm>.

Similarly, the Chief Disciplinary Counsel should also develop a documented, annual budget planning process. Using this process, the Chief Disciplinary Counsel should prepare and submit to the Court an annual budget for the investigative/prosecutorial branch of the judicial and lawyer discipline system. Specifically with regard to judicial discipline cases, the recent elimination of the Senior Assistant Attorney General's role, and that of the two investigators from the Attorney General's Office, in the investigation and prosecution of these matters may necessitate the hiring of additional disciplinary counsel for judicial discipline.<sup>57</sup> Further, there may be a need to hire additional investigators as the two on loan to the system from the Attorney General's Office have returned to that office. The Chief Disciplinary Counsel should consider the need for increased resources for necessary technology improvements, and space and storage issues.

The Commission and Chief Disciplinary Counsel should each use an annual planning and budget process to develop a true needs assessment for all components of the disciplinary system, and to create a proposed three to five year funding plan. The Office of Finance and Personnel of the Judicial Department can help ensure that salaries for the professional staff are competitive so as to attract and retain experienced individuals. If necessary, a financial planner or budget analyst should be used to assist in assessing the current and future needs of the system in terms of finances, technology and staffing.

The team recommends that the subcommittee of the Judicial Conduct Commission communicate with the Chief Disciplinary Counsel during the annual budget process to try to address any potential conflicts regarding resource priorities. It is preferable, if such conflicts occur, that they be worked out before the presentation of budget requests to the Court.

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<sup>57</sup> Rule 4(B)(5), ABA Model Rules for Judicial Disciplinary Enforcement.

## **Recommendation 2: Members of the Judicial Conduct Commission Should Receive More Intensive and Mandatory Formal Training**

### Commentary

The team was advised that, in large part, Commission members receive on the job training. Although efforts to enhance the training offered to Commission members is under way, the team recommends that the Commission Counsel, in consultation with the subcommittee suggested in Recommendation 1 above, oversee the development of training materials and programs specific to judicial disciplinary enforcement for all Commission appointees. These materials should be made available to Commission members electronically. Commission Counsel should work with Disciplinary Counsel's Office to ensure that appropriate topics are covered and speakers obtained. Additionally, respondents' counsel can provide valuable insights to system adjudicators.

Training helps to ensure consistency in and the expeditious resolution of disciplinary matters. Training should be mandatory for all new appointees, and should occur at least bi-annually for all others. Training should stress the need for the Commission members to fulfill their duties in a timely manner so as to enhance the public's perception that the system is operating efficiently. Both Investigative and Hearing Panel members should receive training and guidance with respect to substance abuse, gambling and mental health issues. These issues are raised with increasing frequency in judicial disciplinary cases.

The consultation team also recommends that Commission Counsel, members of the Judicial Conduct Commission, and Disciplinary Counsel responsible for judicial discipline cases attend the National College on Judicial Conduct and Ethics sponsored by the American Judicature Society's Center for Judicial Ethics on a bi-annual basis. The National College provides a forum for judicial conduct commission members and staff, judges, and judicial educators to learn about current issues in judicial ethics and discipline.<sup>58</sup> Attendees have the opportunity to collect information and discuss current issues and problems in this area with leading experts, scholars and practitioners from across the country.

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<sup>58</sup> <http://www.ajs.org/ethics/college.asp>

### **Recommendation 3: The Judicial Conduct Commission Should Increase Outreach to the Public and the Judiciary**

#### Commentary

The Judicial Conduct Commission is responsible for informing the public about the existence and operation of the South Carolina judicial discipline system.<sup>59</sup> This includes making the contact information for the Commission available as well as the disposition of each judicial discipline case in which public discipline is imposed.<sup>60</sup> Disciplinary Counsel's Office and the Judicial Conduct Commission should more actively coordinate outreach to the profession and the public about the judicial discipline system.<sup>61</sup>

Public confidence in the judicial disciplinary system is vital.<sup>62</sup> The public should be provided with the means to easily identify the agency as the appropriate office with which to file a complaint about judicial misconduct. One of the simplest ways to inspire confidence is to ensure that the agency is as accessible as possible to the public, judges and those seeking to file a grievance. All South Carolina judges, lawyers, and the public should be able to view information about the judicial discipline system via the internet. The team recommends that the Court make available resources to develop a stand-alone, consumer friendly web site for the entire lawyer and judicial discipline system.<sup>63</sup>

The judicial discipline system part of the web site should include a searchable data base consisting of the Code of Judicial Conduct, court opinions and orders, Hearing Panel reports and recommendations affirmed by the Court, and the Commission's Annual Reports. Making this information available electronically will also help the Hearing Panels ensure consistency in sanction recommendations. This searchable database should be updated regularly. Part of this site can also be developed to allow password protected access for Hearing Panel members and Commission Counsel to electronically exchange and edit draft reports and recommendations.<sup>64</sup> This can help expedite the report drafting process and save resources. The proposed schedule of Investigative Panels and Hearing Panels can also be made available to Commission members on the password protected part of the site, so that they may readily confirm schedules or propose changes in hearing dates if necessary. Disciplinary Counsel should not have access to this part of the web site, so as to maintain appropriate separation between the prosecutor and adjudicators.

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<sup>59</sup> Rule 4 (e)(2)(D), South Carolina Rules for Judicial Disciplinary Enforcement.

<sup>60</sup> Id.

<sup>61</sup> See, e.g., Comment to Rule 4, ABA Model Rules for Judicial Disciplinary Enforcement regarding the importance of public education about the judicial discipline system.

<sup>62</sup> Preface and Preamble, ABA Model Rules for Judicial Disciplinary Enforcement.

<sup>63</sup> Suggestions for content for the lawyer discipline portion of the new web site are set forth in Recommendation 2 of the Report of the South Carolina Lawyer Discipline System.

<sup>64</sup> See, e.g., <http://www.ladb.org/index.asp>.

A schedule of public hearings should be included on the site. Proposals by the Commission to amend the Code of Judicial Conduct and Rules for Judicial Disciplinary Enforcement can be made available for public comment on this site, as well as the Court's. Making this information available will help educate the judiciary and the bar, and enhance the public's trust and confidence in judicial accountability. The site should link to the pages for Disciplinary Counsel's Office and the Commission for Lawyer Conduct.

During the consultation team's meeting with the South Carolina Supreme Court, the justices expressed interest in having a research library for judicial and lawyer discipline precedent. The team agrees that this is an excellent idea that will help to educate new justices and enhance consistency in the imposition of sanctions. The team believes that the new web site could serve this function.

Although the existing pages for the Commission on the state judiciary's web site indicate that there are no special requirements for filing a complaint other than it must be in writing and signed, Disciplinary Counsel's Office should consider developing a form for complaints against a judge (or a lawyer) that can be downloaded and mailed in. Disciplinary Counsel should also consider allowing such complaints to be submitted electronically at some point in the future. Disciplinary Counsel's Office should offer assistance to complainants who are unable to write their own complaints. A paralegal from the Office can perform this task.

In addition to creating a consumer-friendly web site, Disciplinary Counsel's Office, the Judicial Conduct Commission, and Commission Counsel should work together to develop, publish and widely disseminate pamphlets describing the judicial discipline system. The team was advised that currently the only sources of information about the system are the Judicial Department's web site and the correspondence that is sent to complainants acknowledging their grievances or advising them that files have been closed. Possible locations to disseminate these pamphlets include public libraries and consumer organizations.

It is also important that Judicial Conduct Commission members and Disciplinary Counsel's Office personally engage in public education efforts.<sup>65</sup> Members of Disciplinary Counsel's Office already do so by addressing the bar, but the system's professionals and its appointed adjudicators should also speak regularly about the system to the public at civic organizations. In particular, they should seek invitations to speak at meetings of consumer organizations and citizens groups. These speaking engagements can be used to educate the public about judicial ethics and disciplinary enforcement, including the role of judicial discipline in maintaining an independent judiciary and why that is important.<sup>66</sup> Public speaking can also help dispel misperceptions about South Carolina's system and how it operates.

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<sup>65</sup> Id.

<sup>66</sup> See, e.g., Comment to Rule 3, ABA Model Rules for Judicial Disciplinary Enforcement.



#### IV. STRUCTURE AND PROCEDURAL RULES

##### **Recommendation 4: The Court Should Increase Public Representation on the Judicial Conduct Commission**

###### Commentary

Two of the Commission on Judicial Conduct's twenty-four members are non-lawyer citizens. They may serve on Investigative Panels, but not on Hearing Panels (although a non-lawyer magistrate or municipal court judge may serve in that capacity). Each Investigative Panel consists of seven members comprised of: (1) three judges from the circuit court, family court or masters-in equity; (2) one magistrate, municipal court or probate judge; (3) one lawyer member; (4) one public member; and (5) the Commission Chair or Vice-Chair.

The consultation team recommends that the Court amend Rule 4 of the Rules for Judicial Disciplinary Enforcement to provide that the Commission be comprised of 1/3 public members.<sup>67</sup> Increasing public participation in the system in this manner enhances public trust and confidence and provides the Commission with an important perspective.<sup>68</sup> The public tends to suspect the objectivity of a disciplinary entity if that entity is composed solely or almost completely by members of that profession. This is true for both lawyer and judicial disciplinary agencies. Doing so will also spread the work of the Investigative Panels more evenly, especially with regard to the public members. Currently, the two public members of the Commission are charged with preparing for more than one of the Commission's Investigative Panel meetings. The appointments of all Commission members should continue to reflect the diversity of the state's population.

The team further recommends that the Court amend Rule 4 of the Rules for Judicial Disciplinary Enforcement to ensure that public members comprise one-third of each Investigative and Hearing Panel.<sup>69</sup> In order to accomplish this, the Court will have to change the total number of Commission members on each panel. Consideration should be given to whether seven or more members on an Investigative Panel is an efficient use of resources for a body that has the benefit of considering the work product of a professional Disciplinary Counsel's Office and respondent's counsel, and the advice of Commission Counsel. Rule 3(A) of the *ABA Model Rules for Judicial Disciplinary Enforcement* suggests that the Commission divide itself into Investigative Panels three members and a Hearing Panel of nine members.

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<sup>67</sup> Rule 2(A), ABA Model Rules for Judicial Disciplinary Enforcement. See also, Standard 2.3, *ABA Standards Relating to Judicial Discipline and Disability Retirement*, American Bar Association (1978).

<sup>68</sup> *Id.*

<sup>69</sup> Rule 3(A), ABA Model Rules for Judicial Disciplinary Enforcement.

Public members should not be excluded from serving on Hearing Panels. During the course of the on-site portion of the consultation, the team queried those interviewed regarding their thoughts about adding non-lawyers to the Hearing Panels. The majority indicated that they thought it would help enhance public trust and confidence in the disciplinary system and the judiciary. A few interviewees disagreed, and expressed concerns that non-lawyers would have difficulty grasping the complexities of litigation, the need to separate issues of harmless legal error from misconduct, and the applicable rules. While these fears are not unique, it should be noted that South Carolina permits non-lawyers to serve as magistrate judges. If non-lawyers are qualified to serve in a judicial capacity, they should be able to serve as Hearing Panel members in judicial disciplinary proceedings. The individuals selected for appointment should be qualified and trained.

The experience of those states that have included public members on Hearing Panels is positive. They can provide valuable perspectives and should not be appointed on the basis of politics or ideology. They serve in that capacity in the majority of states in the lawyer disciplinary process and on many states' judicial conduct commissions. The team suggests that the proposed subcommittee of the Judicial Conduct Commission be responsible for developing and implementing a screening process for the appointment of non-lawyer citizen Judicial Conduct Commission members by the Court. It should seek these individuals through an open, well-publicized nomination process. Through appropriate selection and training, these individuals can be valued participants in the system.

## **Recommendation 5: The Court Should Adopt a Rule Creating a Separate Procedure for Handling Complaints Against Its Own Members**

### Commentary

Rule 27 (g) of the South Carolina Rules for Judicial Disciplinary Enforcement provides that a justice of the Supreme Court shall recuse himself or herself from any proceedings involving allegations of misconduct or incapacity made against him or her, or where the Code of Judicial Conduct requires recusal. However, there is no separate mechanism for investigating and prosecuting allegations of misconduct against a member of the Supreme Court. The team recommends that the Court adopt such a rule.<sup>70</sup> Allowing the Court to retain the authority to discipline one of its own members may create an appearance of impropriety. Adopting a new rule for the handling of complaints against its own members will further the Court's commitment to maintaining the public's trust and confidence.

Complaints against members of the Court should generally proceed in the same way as complaints against other judges. However, upon an Investigative Panel finding that formal charges should be filed against a Court member or that a justice should be placed on interim suspension, a special supreme court should be selected.<sup>71</sup> The number of judges on the special supreme court should equal the number of judges on the Court itself, and its composition may be of judges from trial courts, appellate courts or a combination thereof.<sup>72</sup> Selection should be made after the finding of probable cause by the Investigative Panel, but prior to the filing of formal charges, and even earlier in the case of a petition seeking interim suspension.

The special supreme court would review matters only if Disciplinary Counsel or a respondent justice objects to the Hearing Panel's report and recommendation. In such circumstances, the special supreme court should follow the requirements of Rule 27 of the South Carolina Rules for Judicial Disciplinary Enforcement. If neither Disciplinary Counsel nor the respondent justice objects to the Hearing Panel's report and recommendation, the decision of the Hearing Panel will be final. Approval of any petitions for discipline on consent would be made by the full Commission.<sup>73</sup>

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<sup>70</sup> Rule 26, ABA Model Rules for Judicial Disciplinary Enforcement.

<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> Id.

**Recommendation 6: The Court Should Amend the Rules for Judicial Disciplinary Enforcement to Eliminate Investigative Panel Approval to Conduct Full Investigations, and Eliminate the Use of Attorneys to Assist**

Commentary

Currently, Disciplinary Counsel must seek the approval of an Investigative Panel before conducting a full investigation.<sup>74</sup> The consultation team recommends that the Court amend its Rules to eliminate this requirement. Disciplinary Counsel should be authorized to initiate a full investigation in appropriate circumstances. The consultation team saw no indication that Disciplinary Counsel would abuse this discretion if granted. To the contrary, those interviewed by the team felt that Disciplinary Counsel's Office are professionals who evaluate complaints against judges fairly and thoroughly.

If the Court determines that amending the Rules for Judicial Disciplinary Enforcement in this manner is appropriate, it should also consider amending Rule 15 (b). This Rule requires Disciplinary Counsel to obtain Investigative Panel approval to issue a subpoena during a preliminary investigation.

The Court should also amend the Rules to eliminate the use of Attorneys to Assist (ATAs) in judicial disciplinary matters. The consultation team was advised that ATAs are rarely used in this context any more. Further, a fully staffed and adequately resourced Discipline Counsel's Office, utilizing professional investigators, should be able to handle the Judicial Conduct Commission's caseload.

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<sup>74</sup> Rule 19 (b), South Carolina Rules for Judicial Disciplinary Enforcement.

## V. PREVENTION MECHANISMS

### **Recommendation 7: The Court Should Adopt Procedures Relating to the Handling of Funds by Magistrates**

#### Commentary

As noted above, a significant number of complaints against South Carolina judicial officers are made against magistrates. Most are made against non-lawyers holding that position (98 of the 106). The team inquired as to the nature of these complaints. With some frequency the issue of the handling of funds by magistrates arose—not issues of theft, but relating to accounting procedures and the manner in which monies were being held.<sup>75</sup>

Magistrates are responsible for collecting and accounting for a variety of fees, fines and costs, and are required to issue receipts for all monies they receive.<sup>76</sup> In criminal cases they are required to provide the funds they collect to the county treasurers, excluding any money immediately due to informers.<sup>77</sup> A magistrate who, with regard to criminal cases, refuses or neglects to provide those funds can be prosecuted for doing so, and upon conviction fined not less than \$100 but no more than \$1000, jailed for three-six months, and dismissed from office.<sup>78</sup>

By statute, magistrates are required to keep two sets of books relating to their receipt and disbursement of monies—one for civil and one for criminal cases. They are required to provide monthly reports to the county auditor and treasurer setting forth the specifics of how funds collected were handled and, in the case of criminal matters, how he or she disposed of those funds.<sup>79</sup> Failure to do so can result in fining or jailing the magistrate.

In March 2007, the Chief Justice of the South Carolina Supreme Court issued an administrative order setting forth very specific accounting and training requirements for magistrates.<sup>80</sup> This order superseded all other orders setting forth such requirements. The 2007 order includes a requirement that each magistrate's court provide to the Office of Court Administration specific information regarding the two types of required accounts (one account for civil, and one for criminal/traffic matters). Magistrate's courts may also create escrow accounts for the temporary holding of funds if necessary.<sup>81</sup> Magistrates are required to use the uniform receipting system developed by the Office of Court Administration.<sup>82</sup> It

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<sup>75</sup> See e.g., *In re Kinlaw*, 657 S.E. 2d 756 (2008); and *In re Sanders*, 564 S.E. 2d 670 (2002).

<sup>76</sup> S.C. Code Ann. § 22-2-60 to 140 (2007).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2007-03-13-01>

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

was not clear to the team whether all magistrate courts in the State are computerized. It appears that some magistrate courts accept credit/debit cards for payment, while others do not. Magistrates can collect monies in the form of cash, checks, and money orders.

The 2007 order also provides for overdraft notification and notification of account shortages to Disciplinary Counsel's Office.<sup>83</sup> That the Court chose to include such a requirement is important.

It is clear to the consultation team that the Court has taken a proactive approach to the handling of monies by magistrates. To compliment these efforts, the team suggests that the Court consider instituting a random audit program for magistrates. In the lawyer discipline context, random audits have proven an effective deterrent and an educational incentive.

The random examination of magistrate accounting procedures and reports by independent auditors can also provide the magistrates with expert and practical assistance and education in maintaining necessary records and supporting books of account.

A random audit of a magistrate's account should be commenced by the issuance of an investigative subpoena, from a Court designated auditor, to compel the production of records relating to the magistrate's accounts and related records. The subpoena should contain a certification that it was issued in compliance with the rule; that the magistrate was selected at random; and that there exist no grounds to believe that misconduct has occurred with respect to the accounts being audited.

In the course of the audit, the examiner should determine whether the magistrate's records and accounts are being maintained in accordance with the applicable Court orders and statutes. This is typically done by employing sampling techniques to examine "selected accounts," unless discrepancies are found which indicate a need for a more detailed audit. "Selected accounts" may include: safe deposit boxes and similar devices; deposit records; canceled checks or their equivalent; and any other records which pertain to transactions involving the magistrate.

The examiner should prepare a written report containing the audit results. A copy of that report should be provided to the audited magistrate. If the audit reveals deficiencies in the magistrate's records or procedures, the magistrate should, within 10 business days after receipt of the report, provide evidence that the alleged deficiencies are incorrect, or that they have been corrected. If review of the alleged deficiencies or corrective action requires additional time, the magistrate should apply for a reasonable extension of time in which to respond to or correct the deficiencies cited in the audit report. A magistrate should cooperate in an audit and should answer all questions posed, unless the claiming a privilege or right which is available under applicable state or federal law. A magistrate's failure to cooperate in the random audit should constitute professional misconduct.

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<sup>83</sup> Id.

All records produced for an audit should remain confidential. Records produced for an audit may be disclosed to the Chief Magistrate and Disciplinary Counsel if the examination reveals evidence that a violation of accounting requirements and/or misconduct may have occurred.

The team also suggests that the Court consider taking steps to limit the circumstances in which magistrates are permitted to take cash as payment for fines, fees or costs. By doing so, the Court will lessen the risk that those funds may not be properly handled or accounted for. The consultation team understands that in certain counties and municipalities this may not be feasible, and recommends that the Court and the Chief Magistrate undertake a study of this issue.

## **VI. CONCLUSION**

As noted throughout this Report, the consultation team was impressed by the dedication of the Court, the volunteers and the professional staff of the disciplinary agency. The team did not hear much criticism of the judicial disciplinary process. The Standing Committee on Professional Discipline Committee hopes that the recommendations contained in this Report, will assist the Court.

As part of the discipline system consultation program, the Committee is available for further consultation with the Court.

# **APPENDIX A**

**DAVID S. BAKER** is Chair of the ABA Standing Committee on Professional Discipline. He was a partner with Powell Goldstein, L.L.P. in Atlanta, Georgia, where his practice was concentrated in corporate law and finance, health care provider and environmental law until 2008 when he joined the firm of Taylor, Busch, Slipakoff & Duma. He has served as Chair of the ABA General Practice Section (1986-1987) and the Standing Committee on Environmental Law (1993-1996). A former member of the ABA House of Delegates (1987-1990), Mr. Baker currently serves on the ABA Board of Elections and the Committee on State Justice Initiatives. Mr. Baker is also a member of the Board of Visitors of the Terry Sanford Institute of Public Policy at Duke University. He is a graduate of the Harvard University School of Law and is licensed to practice in Georgia and New York.

**ANTHONY L. BUTLER** is a member of the Standing Committee on Professional Discipline. He was a Disciplinary Counsel with the Washington State Bar Association Office of Disciplinary Counsel until 2004 when he started a solo practice in the areas of legal ethics and plaintiffs' personal injury litigation. Mr. Butler is on the roster of Adjunct Faculty at the Seattle University School of Law where he has taught professional responsibility. A former President of the Loren Miller Bar Association and a former Board Member of the National Bar Association, he is currently a member of the Washington State Bar Association Board of Governors. He is a graduate of the University of Washington School of Law and licensed to practice in Washington State.

**HON. BARBARA KERR HOWE** is immediate Past-Chair of the ABA Standing Committee on Professional Discipline. She was an Associate Judge of the Circuit Court for Baltimore County, Maryland, and now serves in “senior status” throughout the courts in Maryland. After her appointment in 1988, she was elected to the bench in 1990 for a fifteen-year term. She served as a director of the Attorney Grievance Commission of Maryland from 1983-1985 after having served on its Inquiry Panels for a number of years. She was a member of the Judicial Disabilities Commission of Maryland from 1991 through 1995 and its Chair during 1995. She is a graduate of the University of Maryland Law School. She was a partner in a law firm engaged in general practice.

She was President of the Maryland State Bar Association, 1996-1997, a member of the ABA Standing Committee on Professionalism from 1995-1998, chair of the Professionalism and Professional Responsibility Committee of the ABA General Practice Solo and Small Firm Section, a member and director of the American Judicature Society, and the National Association of Women Judges. She is a fellow of the Maryland Bar Foundation and of the American Bar Foundation.

**LARRY RAMIREZ** is of counsel to Carrillo Law, LLC in Las Cruces, New Mexico. Larry is a former District Judge with the Third Judicial District Court, State of New Mexico where he served as a Children's Court judge. Larry has served as Chair of the General Practice, Solo and Small Firm Division of the American Bar Association. He has also served on the Multijurisdictional Practice Commission of the ABA and is a Past Chair of the Disciplinary Board of the Supreme Court of the State of New Mexico. Larry has been a lawyer since 1977 and received his law degree from the University of Notre Dame.

**MARY M. DEVLIN** is Regulation Counsel, American Bar Association Center for Professional Responsibility, where she directs the Association's efforts in improving lawyer and judicial disciplinary enforcement for the ABA Standing Committee on Professional Discipline. She also served as counsel to the ABA Standing Committee on Amicus Curiae Briefs for eleven years. She has been involved in professional ethics and discipline for over twenty years, previously serving as counsel to the American Medical Association's Council on Ethical and Judicial Affairs. She is the author of over 50 articles. Her J.D. from I.I.T. Chicago-Kent College of Law was with honors. She received an LL.M. from DePaul University College of Law in 1996. She has a master's degree in library science from Dominican University and a master's degree in history from the University of Illinois at Chicago. She is a Life Fellow of the American Bar Foundation.

**ELLYN S. ROSEN** is the Associate Regulation Counsel at the American Bar Association Center for Professional Responsibility, where she serves as counsel to the ABA Standing Committee on Professional Discipline and the ABA Task Force on International Trade in Legal Services. She also serves as staff liaison to the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers. Previously, she was a senior litigation counsel with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, where she investigated and prosecuted allegations of lawyer misconduct for six and one-half years. Ms. Rosen co-chaired the Chicago Bar Association's Young Lawyers Section Professional Responsibility Committee, for the 1997-98 through 1999-00 bar years. Since 2000, she has served as an investigator and interviewer for the Alliance of Bar Associations for Judicial Evaluations. The Alliance of Bar Associations consists of the Illinois State Bar Association and ten special interest bar associations that evaluate candidates for election and appointment to the bench in Illinois. She received her J.D. with honors from the Indiana University School of Law in Bloomington, Indiana.