

During Good Behavior: The Evolution of Judicial Conduct Code Enforcement

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Abstract

The federal government has looked to its 50 laboratories of democracy when deciding what changes to adopt nationwide. In this article, I argue the federal government should look once more at how states address judicial misconduct to create a formal process addressing U.S. Supreme Court misconduct. By examining the development of judicial conduct commissions in both Georgia and Tennessee, the federal government can determine how to create a commission responsible for code enforcement for the highest court in the land, the U.S. Supreme Court.

“The position of those in the judiciary is always in the delicate balance of the public eye, which at times may see leanings that do not exist. It is a difficult role, but none must be more scrupulous than the jurist who dispenses justice if the integrity of the bench and the faith of the public is to be upheld.” -*The Tennessean*, November 25, 1962

Introduction

Over the last decade, the U.S. Supreme Court has been scrutinized for partisanship and lack of recusal in the face of conflicts of interest. When the Court finally officially adopted its own judicial conduct code, authored by the institution itself, many were quick to point out the lack of an enforcement mechanism. Though each state has adopted its own judicial conduct code, each state has also seen fit to create an enforcement commission for their judicial conduct codes, to increase accountability and institutional legitimacy. Even the lower federal judiciary adopted a conduct code and created a formal

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procedure for dealing with judicial misconduct. The only court not subject to an enforcement commission is the U.S. Supreme Court itself. The idea of creating such an institution is not new, but it comes with a few important questions each of the states and the lower federal judiciary had to answer. If a conduct commission were to be created for the U.S. Supreme Court, who would create it? Who would sit on the commission? Would this commission be created by Congress, the Justice Department, or by the president? These are a few questions that all 50 states have had to answer when creating their commissions in the later part of the 20th century. Each state has created a judicial conduct code and an enforcement agency, meant to address judicial misconduct to increase accountability and public trust in the judiciary (Canelo, Boyea, and Myers 2025).

In the wake of the public distrust in politicians brought about by the Watergate era, some states sought to regulate public official misconduct, including that of judges, through the creation of judicial conduct commissions (Kastenmeier 1993). Many states had already adopted a judicial conduct code decades earlier. The next step was to create a method of enforcement of the code. However, some of these commissions were seen as ineffective, because of their lack of public transparency and failure to appropriately reprimand those engaging in misconduct. In an effort to address these faults, states like Tennessee and Georgia have abolished and recreated their state commissions to increase their transparency and effectiveness. Using newspaper articles published in Tennessee and Georgia, I look at how both states have addressed judicial accountability issues, to see if we can learn anything about how the federal government could create an enforcement agency for the Court's conduct code. When Congress and the lower federal judiciary created their method of processing misconduct complaints in 1980, Congress looked at how the states had dealt with judicial misconduct (Kastenmeier 1993). If the U.S. Supreme Court is to ever have a commission enforcing the conduct code, examining how states have come to create their own codes and enforcement commissions will provide

insight as to what reforms should be considered.

Judicial Misconduct's Impact

Judicial misconduct is not a new topic that has emerged in our judiciaries. This has been an issue in states and countries for centuries. However, many countries and states have only begun to address this issue in the last century. In their edited volume, Devlin and Wildeman describe common issues in the ways countries address judicial misconduct. Among those issues are transparency, the involvement of the public in addressing misconduct, clarity of judicial conduct expectations, discipline of those accused of misconduct, and effectiveness of a system built to address misconduct (2021; Tembeckjian 2007). These issues are not just those grappled with in the 13 countries the edited volume addresses, but for state level conduct commissions in the United States. In Tennessee and Georgia, each of these issues is addressed at one point or another. Tennessee has created three different judicial conduct commissions in the last century, while Georgia has only created two.

Each commission was created by the state's legislature. Those commissions that have been abolished were seen as ineffective. For the federal judiciary, there have been two pieces of legislation helping with judicial conduct issues. The first was the Administrative Office Act, passed in 1939. This legislation created circuit judicial councils in each circuit court, responsible for solving circuit issues. This included misconduct, but was not able to reprimand judges for misconduct. When the council of the Tenth Circuit tried to keep Court of Appeals Judge Stephen Chandler from hearing cases after his aggressive conduct against attorneys in his courtroom made front page news (Kastenberg 2017). Because it was unclear as to whether the circuit court council was allowed to keep judges from hearing cases, The federal judiciary, excluding the Court, created their judicial conduct review procedure in 1980, through the passage of the Judicial Conduct and Disability Act. The process created by this legislation has not been changed drastically since its creation.

However, it requires chief circuit court judges judge their own colleagues' conduct. The Court is still allowed to regulate itself, with complaints filed against the justices to be handled by that particular justice (Kastenmeier 1993). Because of the number of judges on the federal bench, this is much easier in the lower federal courts than on the Court.

Tennessee

The state of Tennessee has had three different conduct commissions starting in 1971. These commissions were the Judicial Standards Commission, the Court of the Judiciary, and the Board of Judicial Conduct. Judicial misconduct in the state of Tennessee was originally addressed by either the state legislature or the state's legal community. The first mention of judicial misconduct in *The Tennessean* was May 12, 1893. Judge Charles Tyler was investigated by "the state House for misapplication of public funds and neglect of public duties." Ultimately, the state House decided against impeachment of Judge Tyler. Though there were other instances of judicial misconduct mentioned in the paper, it was not until 1958 that there was a high profile impeachment case of a judge. Since the state had not yet created a method of enforcing the adopted judicial conduct code, violations of the code did not result in punishment (1925, 1).

Some local bar associations would adopt resolutions ordering judges to abide by the code if a violation was known to have happened. However, the only institution able to remove a judge from the bench was the state legislature. Though impeachment had been used more frequently in the early part of the 19th century, the 20th century did not see a regular usage of impeachment (Hatcher 1978, 2B). In 1829, the Tennessee legislature held impeachment hearings for Judge Joshua Haskell. The judge was charged with leaving court to eat a slice of watermelon and keeping hogs in the courthouse, which caused the building to become flea infested. Judge Haskell was not convicted in the state senate. However, a change in the state's constitution in 1834 allowed the state's judiciary to become a coequal branch of government with the legislature and executive branches.

Prior to this change, the state legislature was in charge of creating and managing the state's judiciary (McClure 1915).

In 1958, the state legislature filed 31 articles of impeachment against Judge Raulston Schoolfield for varying instances of misconduct, including bribery, tyranny in the courtroom, and gambling. One charge was that Judge Schoolfield bought and ordered two pistols thrown into a nearby lake (Hatcher 1958, 1). Another charge was the judge “illegally closed over 1600 cases” (Hatcher 1958, 1). During the proceedings, Schoolfield did not seem worried. During one day of the impeachment hearing, the judge left for an hour to get a steam bath. After a few months, Schoolfield was impeached by the state's legislature, which was the first judicial impeachment in 42 years (Seigenthaler 1959, 1).

Both the Tennessee and Chattanooga Bar Associations moved to disbar the judge. The reason behind the disbarment was because the judge violated the judicial ethics code, adopted by the state supreme court. The judge had been reprimanded twice before for misconduct by the state supreme court. The first time was in 1930 for taking the bar exam for another person. The second time was for refusing to serve as appointed counsel for defendants accused of burglary (Seigenthaler 1959, 1). Because the legislature did not bar Schoolfield from running for public office, was able to qualify as a candidate for the position of Hamilton County judge (1960, 1). This presented a problem that the state legislature would not try to address until the failed impeachment of Charles Galbreath.

Judicial Standards Commission

It was the Tennessee Bar Association that began to push the state legislature to create two new commissions to improve the judiciary. The first was a commission to help with the selection of judges. The second was to help remove unfit judges from the bench (Warnecke, 1970 1A). As previously mentioned, the only method of judge removal at this point was through impeachment. This method was seen as “very embarrassing” and the

bar association wanted the state legislature to create a method of removal that would not publicly shame judges. A proposed judicial standards commission would “review the mental, physical, and moral condition of all Tennessee judges periodically,” and would recommend unfit judges resign from the bench. For those refusing to leave their post, then the legislature would remove the judge using a two thirds vote in both chambers (Warnecke 1970, 1A).

One member of the bar, Circuit Judge James C. Witt, argued the general public should not be relied on for recommending changes to the judiciary. This is because “the average citizen does not know what the (judiciary) system is all about” (Warnecke 1970). Instead, it is up to lawyers and judges to recommend and advocate for these changes. The 1971 state legislature passed legislation creating the state’s Judicial Standards Commission. The Commission would secretly investigate judicial conduct in secret and include 9 members: 3 judges selected by the state supreme court, 3 lawyers selected by the state’s bar association, and 3 laymen selected by the General Assembly. This allowed judges, lawyers, and members of the public to determine judge fitness (Daughtrey and Thompson 1970, 1A). Early on in the Commission’s existence, the secrecy of its processes were comforting and concerning. Because of the secrecy of how complaints were assessed, it was unclear as to whether the Commission was effective (Jost 1973a, 40). However, this secrecy allowed lawyers, a group interacting the most with judges, to feel comfortable filing complaints (Jost 1974, 12). A common fear for many wanting to file a complaint against a judge was the judge would seek retribution against the complainant. The secrecy of the Commission’s work meant retribution was not as much of a concern.

In the same year, the ABA began thinking about revisions of the 1924 Model Code, with the federal judiciary potentially adopting a similar conduct code (Schweid 1971, 2A). This was important because while Tennessee had adopted a judicial conduct code, the creation of a new code would require both the Tennessee Judicial Conference members

and the state supreme court to adopt this new code (Jost 1973, 40). When the American Bar Association Code of Judicial Conduct was revised in 1973, Tennessee's lawyers met to consider revising the state's judicial conduct code. This meeting was contentious because of a new provision in the ABA code restricting hiring family members. At this time, there were many judges who employed their family members as either law clerks or legal secretaries. Those judges employing family were typically in a rural area of the state because there are not many people who could fill such positions. If the Tennessee Judicial Conference and state supreme court were to adopt the ABA Model Code, without revisions, immediately, many judges across the state would be in violation of the new code. This particular provision was dropped from the conduct code considered in Tennessee (Jost 1974a, 2). It was also argued the ABA Model Code did not need to be fully adopted because the Judicial Standards Commission exists.

Tennessee's Judicial Conference and Supreme Court decided to adopt the new judicial code, while the Judicial Conference decided the code would not be mandatory, but rather would be advisory in nature (Jost 1974a, 2). Within a few months, *The Tennessean* was already writing about state judges employing their family members and though this violates the ABA Model Code, it does not violate the Tennessee Judicial Conduct Code (Jost 1974b, 15; 1974c, 6A). At least 20 judges were reported to be employing their wives and daughters as legal secretaries. Though the general public, as mentioned earlier, does not typically pay attention to the state judiciary, the issue of nepotism in Tennessee captured the attention of the general public. By the end of 1974, the state's supreme court adopted the new ABA Model Conduct Code and made the new code version applicable to all state judges (Jost 1974d, 1). In the next year, the state supreme court publicly stated the Judicial Standards Commission was in charge of enforcing the state's judicial conduct code (Jost 1975, 2B). Though the Commission protected the judges under investigation, after an investigation finished, the files would be destroyed.

The secrecy of the Commission was tested when Tennessee passed a new Sunshine Law. Under this new legislation, the Commission's meetings needed to be open to the general public to promote government transparency (Jost 1975a, 15). Chairman of the Judicial Standards Commission, Judge C.S. Carney, Jr., said the law did not apply to the Commission, but the state supreme court disagreed (Jost 1976, 5). The Sunshine Law had a provision that repealed any law contradicting it, which included the secrecy provision in the law creating the Commission. In 1976, Judge Charles Galbreath wrote a letter to *Hustler Magazine* criticizing pornography laws and using obscene language on official court letterhead that included the names of other court of criminal appeals judges (Jost 1976, 5). This letter was published, including the letterhead, in the magazine, which enraged many in the Tennessee legal community. The state's Judicial Conference censured Galbreath, while the Standards Commission began investigating him. While the Commission investigated Galbreath, he was temporarily kept from hearing cases. The Commission decided to recommend Galbreath be removed from the bench, but the legislature did not vote to remove the judge (Hall 1978, 1). Many in the state legislature did not think the judge's off the bench conduct should factor into whether he is removed from the bench. The General Assembly passed a law in the same year making all the Commission's meetings public. Since the Commission was still waiting for legislative clarity on the level of confidentiality of its proceedings, misconduct complaints had not been reviewed since January 1978 (Hall 1978a, 17). Because the Commission's continued secret meetings and defiance of state legislation, the General Assembly abolished the Commission. The new commission would have more disciplinary options and hopefully have a greater level of transparency and legitimacy (Haile and Daughtrey 1979, 8).

Court of the Judiciary

The Court of the Judiciary had 11 members: 6 judges appointed by the state supreme court, 3 attorneys appointed by the state bar, and 2 members of the public. The members of the public were appointed by the Lieutenant Governor and the Speaker of the House (Loggins 1985, 1). To help with more complex investigations of misconduct, the Court on the Judiciary was given the power to ask the Tennessee Bureau of Investigation for help. The new procedure for processing judicial complaints allows those complaints to be released to the public when the judge has been notified in writing about the charges. Though there was more public transparency, an issue arose where judges refused to leave the bench despite being convicted of crimes. For example, General Sessions Judge Ira Murphy was convicted of “mail fraud, lying to a grand jury, and obstruction of justice” (Loggins 1986, 3B). Though he was found to be unfit for the bench and was asked to step down by the Court on the Judiciary, he refused even after he began serving time in an Alabama prison camp. Murphy was collecting a salary while in prison, since he needed to be impeached to officially be removed from the bench. Finally, the state supreme court voted to remove him from the bench and the state legislature impeached Murphy.

The Court on the Judiciary had been relatively successful at addressing misconduct with their increased transparency and the types of disciplinary actions available. However, in 2010, legislators argued the Court on the Judiciary needed more transparency and the state supreme court should not appoint people to serve on this panel (Gee 2010, A1). A concern that complaints with validity were being dismissed by the Court on the Judiciary was raised the following year. Though the number of complaints filed and dismissed were released annually to the public, some legislators expressed concern that there was not enough public discipline of judges taking place (Gee 2011, 1A). Members of the Court on the Judiciary expressed confusion and concern at the suggestion it should be publicly disciplining more judges. Despite the skepticism of the legitimacy of the allegations of

dysfunctionality of the Court on the Judiciary, it was officially abolished in 2012 by the General Assembly.

Board of Judicial Conduct

The Board of Judicial Conduct is the most recent judicial conduct commission in the state of Tennessee, created in 2012. Instead of allowing the state bar association and state supreme court to choose judges and lawyers to sit on the new 16 member Board, judges across the state chose 10 judges to serve. The other 6 members were selected by the governor, lieutenant governor, and house speaker (Tamburin and Wadhwani 2014, A1). The Board is required to publish quarterly reports about the number of complaints received, investigated, dismissed, and the disciplinary action taken. However, some still expressed an issue with the lack of transparency of the Board of Judicial Conduct. The members of the Board are not allowed to disclose whether a complaint has been received about a particular judge, whether there is an ongoing investigation against a judge, or how many times misconduct allegations have been filed. State Senator Mike Bell argued the Board, like its predecessors cannot be effective if it operates in secret (Tamburin and Wadhwani 2014, A11). Since the creation of the Board, there have not been any significant calls to replace it with a better judicial conduct commission. Tennessee is currently on their third judicial conduct commission. Each time a commission has been replaced, it is because of low transparency and the inability to be effective in holding judges accountable. In the next couple of sections, it is clear these issues are not unique to Tennessee, but affect another state and the lower federal courts.

Georgia

Creation of the 1972 Judicial Qualifications Commission

For many states, the original creation of a judicial qualifications commission comes from intense judicial scandal, where the public questions the judiciary's functionality as an impartial arbiter of justice. Prior to the Commission's creation, many Georgia judges had been practicing lawyers and were aware of professional conduct required by the Georgia Professional Code of Ethics. In 1925, a year after the ABA created the first Code of Judicial Conduct, Georgia became the first state to adopt the judicial conduct code (Ariens 2022, 652). Over the next few decades, judges who violated the code would not be reprimanded. Instead, the chief judge would not assign cases to judges charged with for example, attempted murder (McCartney 1949, 1). Judge Robert Carpenter was charged and found not guilty of attempted murder of attorney John Lockwood, who he had tried to shoot. This was after Carpenter found out Lockwood and his estranged wife were having an affair (McCartney 1949, 1). At this time, the Atlanta Bar did not have jurisdiction over judicial ethics violations and Georgia did not yet have a unified bar association.

Though there was a code specific to judges, there was not an enforcement mechanism. An article in the *Atlanta Constitution* newspaper argued judicial codes helped with judicial misconduct, though only half of the states had a code adopted (1959, 4). The Georgia legislature passed a bill, in 1963, to allow the Georgia Supreme Court to integrate the Georgia Bar, which combined all the regional bar associations into one central organization¹ (SB 62). The unification of the state bars allowed for uniform discipline of legal community members, across the state. However, discipline of attorneys is different than that of judges. Judges are members of the legal community, but could only be

¹There have been two bar associations known as the Georgia Bar Association. The first was created in 1884 and was voluntary. The second was created by law in 1963.

disciplined by the state legislature through impeachment proceedings. Impeachment was seen as an extreme and costly method of punishment for judicial misconduct (Buckley 1969; Goldschmidt, Olson, and Ekman 2009).

Following the resignation of U.S. Supreme Court Justice Abe Fortas, the ABA and other state bar associations grew concerned for the legitimacy of the judiciary, deciding to revise the judicial canons, for the first time in over 40 years (Ariens 2022, 658; Associated Press 1972, 4B; Stephens 1971 20A). By 1971, many legislators and members of the legal community determined there was a need for an impartial judicial commission to discipline judges for code violations (Hall 1971, 18-20; Godar 2024, 3). In the state of Georgia, this commission was one of many court reform recommendations produced by then Governor Jimmy Carter's Commission on Judicial Processes in 1971 (Rogers 1972, 10A). The commission was made up of 14 members and was chaired by Georgia Court of Appeals Judge Robert H. Hall (Palmer 1971, 13A; Simpson 1975, 284). Hall had already voiced support for mostly criminal justice system reforms, but had mentioned the importance of an impartial commission to discipline judges (Hall 1971, 18-23). The report created by this commission reasoned that a judicial disciplinary commission was necessary since impeachment is usually unsuccessful and a political action. Those in the "legal profession cannot adequately solve the problem because they are naturally hesitant to present and try charges against judges" (Palmer 1971, 13A). State Superior Court Judge Omer Franklin left the bench on July 1, 1972 to "further the cause of judicial reform" because he felt strongly about the creation of a commission (Spalding 1972, 18A).

Senator Julian Webb introduced Amendment 1 to create the Commission. This amendment also detailed who would serve on the commission and for how long. It allowed for seven members to serve for four years at a time on the Commission. Two members were active judges appointed by the state supreme court. Three members were attorneys selected by the State Bar of Georgia. The final two members of the Commission were

appointed by the governor and could not be a judge or lawyer. The legislative power of impeachment was moved to the Commission (Rogers 1972, 10A). On the November general election ballot, Amendment 1 was passed with 597,670 votes for and 154,961 against (Fort 1972, 16A).

Just a year after the ratification of Amendment 1 to the state's constitution, there was a question of the Commission's effectiveness against judicial misconduct. Since it was created "only one judge has been removed from the bench....and the commission refuses to say how many judges are currently under investigation" (Palmer 1974, 11C). This judge, J.A. Drake, was removed for being too ill to serve as a judge. Drake had been residing in a nursing home since September 1973, therefore was retired by the state Supreme Court (1974, 3A). It is clear that there was an expectation of more judicial removals and information about judicial removal to be released to the public. Chairman of the Judicial Qualifications Commission, H. H. Perry, Jr. argued that those expecting "widespread removal of judges by the commission are uninformed about the quality of Georgia's judicial members" (Palmer 1974, 11C). In the first year of the Commission's existence, the majority of the complaints filed were about judicial decisions, rather than misconduct itself (Cutts 1974, 20A). Those who defended the commission's creation and role argued that secrecy of its day to day operations was "necessary to protect innocent judges from false accusations and to help preserve public confidence in the system" (Palmer 1974, 11C).

Governor Carter argued the level of secrecy used by the Commission and by the state bar was too high to increase public confidence in the legal system and judiciary (Palmer 1974, 11C). If there is a credible complaint filed against a judge or attorney, that information should be available to the public. Some were concerned even the publication of the number of complaints the commission received would decrease public trust in the judiciary (Palmer 1974, 11C). With the new conduct commission in place, Georgia just

needed a list of rules advising judicial conduct. In 1974, Georgia adopted the new ABA 1972 judicial conduct code, which would now be enforced by the Judicial Qualifications Commission. When this code was introduced to the state's judiciary, judges across the state welcomed the "guidance provided for their own activities" (Cutts 1974, 20A). Like Georgia, many states adopted the 1972 ABA Model Conduct Code. Beginning in the previous decade, many states, like Tennessee, decided to create their own judicial conduct commission to increase public confidence in the judiciary. By 1981, Georgia's state supreme court decided to allow the public access to complaints filed against judges when hearings scheduled to further investigate misconduct (1981, 4A). As with other states, this change was made by the state's supreme court to increase public confidence in the judicial system. Previously, the only way hearings would be made public is if the judge decided to open the hearing to the public (Cutts 1979, 1C).

Over the course of the next two decades, there were a few judges reprimanded for courtroom behavior and campaigning practices. For example, Juvenile Court Judge O. Wayne Ellerbee "allowed a mother to whip her 8 year old son in court in lieu of sending him to the Juvenile Detention Center in Waycross" for stealing (McKay 1981, 1B). The court supplied the mother with a leather strap embossed with the word justice to "hit the child 20 to 30 times after his pants and underwear had been rolled down". Judge Ellerbee had requested the Commission hearing on his case be open to the public around the same time that state public officials pushed for open hearings to increase confidence in the judiciary (Associated Press 1981, 2B). The Commission and the Georgia State Supreme Court decided that Ellerbee should be formally reprimanded for allowing such conduct in his courtroom (1981, 28A). Georgia law forbade "whipping or other forms of corporal punishment of persons confined under the law" (Constitution State News Service 1981, 28A).

Cobb County Superior Court Judge Howell Cobb Ravan was investigated for attempt-

ing to have Cobb County Public Safety Director Robert E. Hightower fired, barring two news reporters from his courtroom, and for his angry outbursts (Morrison 1979, 7C). The Georgia Supreme Court suspended Judge Robert K. Broome without pay for 30 days after a series of instances of misconduct. “Broome revoked an order issued by DeKalb Superior Court Judge Keegan Federal” (Salyer 1980, 1C). After using inappropriate language in open court when discussing Judge Federal, Broome went to Federal’s chambers and continued to use “vulgar and obscene language” to verbally abuse and berate Judge Federal. Many people near the judge’s chambers could hear what was said. The significance of this suspension was that it was “the first time in recent memory that the court acted to suspend or remove a judge from office”. This public discipline was handed down in 1980, with the previous judge public discipline in January 1978² (Salyer 1980, 1C). This demonstrates what judicial misconduct and discipline looked like after the Commission was created.

These examples show the commission doing what was created to do. A judge engaged in misconduct. The misconduct was reported, investigated, and the judge was reprimanded either publicly or privately. Leading up to the new century, annual reports on the committee’s productivity were brief but supportive of the committee’s effectiveness. In 1996, the Commission adopted stricter standards regarding conduct for judicial candidates. During the 1996 judicial election cycle, “attorney Mark Merritt accused state Appeals Court Judge Gary Andrew of setting a child molester free” (Dickerson 1998, A08). This caused the Commission to create these new restrictions on how judicial candidates can discuss judicial rulings, while on the campaign trail.

Over the course of this decade, there was a shift from public to private discipline of state judges. Soto (2000) argued that from 1994 to 2000, only 3 percent of the Commission’s actions were taken in public. In the three years prior, over 30 percent of the

²Senior Superior Judge Mark Dunahoo was barred from court for not allowing evidence presented and asking a court reporter to erase tape recordings of the court proceedings (Eason 1978, 12A).

Commission's actions were public (2000, 11). Commission secrecy about filed complaints was also questioned. The state supreme court created a rule allowing those who file complaints against judges to "talk about their complaints once a final ruling has been entered" (Rankin 2000, D10). Before this rule was adopted, those discussing the complaint publicly could be held in contempt of court. This new rule was supposed to help increase public confidence in an institution that many members of the public perceive as ineffective (Rankin 2000, D10). If the Commission adapted to address public concerns of legitimacy, when did the state legislature decide these changes were not enough?

The 2016 Commission Investigation and Abolition

The Commission began to crack down on judicial misconduct starting in 2007, resulting in many judges feeling that the Commission was misusing its power (Howard, Fleischmann, and Engstrom 2017). Others argue that the commission finally started to take complaints of judicial misconduct seriously, resulting in more judges resigning from the bench (Rankin 2010). Even in 2012, there were multiple judges resigning from the bench to avoid public hearings of complaints filed. From 2006 to 2016, more than 60 Georgia judges had resigned from the bench "because of misconduct" (Crawford 2016). Some viewed this mass departure from the bench as the Commission operating at peak effectiveness, addressing judicial misconduct and protecting Georgia from unethical judges (Rankin 2012, Rankin 2012b, B1). So what changed between the end of the last century and 2007?

The number of judicial complaints filed from 1999 to 2009 doubled because of people feeling judicial misconduct is being taken more seriously (Teegardin 2010, B1). There was a noticeable difference in the way the Commission acted (Torpy and Rankin 2010, B1; December 29, 2010). Here, the increase in complaints and increase in discipline were equated with an increase in the effectiveness of the commission itself. The change in

disciplinary action could be the result of Richard Hyde, former Atlanta police detective, being hired as the Commission's investigator in 2007. According to Rankin's 2010 article in *The Atlanta Journal-Constitution*, when hired, Hyde was allowed by the Commission's board to "confront judges with allegations and his investigative findings and negotiate a quick resignation if warranted". This change in the way investigations into judicial misconduct were conducted seems to have been instrumental in encouraging many judges to resign from the bench just after meeting with Hyde (Crawford 2016).

Judges like former Chief Judge David Barrett were no longer on the bench upon retiring after "pretending to offer his pistol to an uncooperative witness, saying if she wanted to kill her lawyer, she could use his gun" (Rankin 2012). In the state of Georgia, judges are allowed to carry a concealed weapon on the bench, but cannot point the gun at someone without a good reason (Rankin 2012c, B1). Judge Douglas Pullen resigned from the bench after being investigated by the Commission and the FBI for tipping off targets of an FBI drug investigation (Rankin 2011, B1). Pullen signed a consent order upon stepping down that he would never seek judicial office ever again. As previously stated, the idea of the Commission conducting a formal investigation and hearing about a judge's alleged misconduct was enough for some judges to leave the bench. Former Governor Roy Barnes praised the Commission's actions arguing the Commission is acting in the way it was designed addressing misconduct effectively (Rankin 2011a, A1).

However, not everyone agreed that the Commission's actions were productive. Former Superior Court Judge Lynn Akeley-Alderman was one of these people. The Commission was investigating a complaint against Akeley-Alderman for "using her position to try to help a Gainesville man who had been convicted of methamphetamine trafficking" (Rankin 2012a). The judge resigned because Akeley-Alderman was said to be attacking the Commission's procedures as too harsh. The Commission asked if "they could release its investigative file on her conduct to the public". The chair of the commission at the

time, Chief Judge John Allen, was asked about the situation. Allen confirmed what Akeley-Alderman had stated happened, adding that releasing the file would allow the public to make its own determination about her conduct (Rankin 2012a). Clearly, the opinion on the commission's actions varied depending on who was asked.

It was not until state House members moved to create a special study committee to investigate allegations the Commission was misusing their power in 2016 when any substantive action was taken to address concerns with the commission's actions. The Special Study Committee on Judicial Qualifications Commission Reform held four hearings, looking for information about the commission itself. The people who testified in front of the committee were a mixture of judges and former employees of the Judicial Qualifications Commission, including Richard Hyde. During the hearing, Hyde admitted that an apology was owed to a few judges for the mishandling of certain judicial misconduct cases (Crawford 2016). The report generated by this committee, following the hearings, detailed the need of a new disciplinary commission for the state judiciary. It was important that the members of the commission were accountable to the public or at least to the state's legislature. During the hearings held by this committee, there were multiple examples given of commission member misconduct that went unaddressed. Judges who testified argued that the complaint investigation and review process was not one that protected the judiciary. Instead, many of the commission members had used their position to coerce judges into doing different things to avoid a public scandal. The Committee argued that there was a need for the state's commission to be accountable to the judiciary and the public. This could only be done by the creation of the commission using legislation, not constitutional amendment (Willard 2016, 3).

State House Representative Johnnie Caldwell Jr., a co-sponsor of the bill, had been a superior court judge in the state of Georgia. In 2010, he resigned from the bench during an investigation by the Georgia Judicial Qualification Commission into Caldwell's sexually

inappropriate comments and physical contact with female attorneys in his courtroom. With his resignation, Caldwell agreed not to run for judicial office ever again. However, in 2012, he ran and won a seat in the Georgia State House. Some argued that though the idea was to make the commission more transparent to the public, accompanying legislation actually makes it much more private and secretive of a group (Cook 2016). The abolition and recreation of the Commission was on the November 2016 general election ballot and passed with 2,341,495 votes in favor and 1,405,117 votes against this change. After the election, the Commission was still reviewing misconduct cases, until, by law, it ceased to exist after December 31, 2016.

Changes to Georgia's Judicial Commission

According to the Commission's annual reports following 2016, a large reason for the change in commissions was to increase judicial integrity and public accessibility. The initial appointment lengths for those serving on the commission were shortened to between one and three years, keeping the regular length of a commission term at four years. There was created a divide between the investigative and hearing panels to increase efficiency. The investigative panel regularly met in the Georgia State Bar Conference Center before the recreation of this commission. Because this practice was seen as something that works well, then the current Commission Investigation Panel still meets at this location. If the state's legislature is still okay with investigations being conducted within a building the state bar owns, then this recreation may not be about the state's legislature taking power from the state's legal community. However, separate offices were created officially for the staff of this commission, something not previously done.

A final change comes from the record keeping format. In 2015, Georgia also revised its judicial conduct code to reflect the 2008 ABA Model Code of Judicial Conduct. This allowed for the new Commission to have a whole new set of rules to enforce. The new

commission keeps all communication and complaints electronically rather than physically. A large drawback of this shift was the loss of a few complaint files in the data hack of 2019. There was a data breach that resulted in the loss of some files, though the Commission stated that the loss was not substantial (Annual Report 2019).

In the years following the recreation of this commission, there were updated rules and changes to the way the commission and the members of the commission operate included in annual reports generated by the commission. Many changes were meant to increase the efficiency of complaint processing and public transparency in the process of reacting to judicial misconduct. Richard Hyde has remained on the Commission, first as a member of the Investigative Panel and in 2021, as a member of the Hearing Panel. Governor Kemp has kept Hyde on as a citizen member of the Commission because of his valuable institutional knowledge of the functionality of the Commission. Past complaints about the Commission had little to do with the members of the Commission and more with the lack of transparency in the complaint process. To address these transparency issues, the Commission now publicly releases their meetings of both the Investigative and Hearing committees on the Commission's website. The public is allowed to tune in via Zoom to parts of these meetings in addition to read the minutes from these meetings.

Federal System

Even though the U.S. Supreme Court does not have its own enforcement commission for the new conduct code, those on the federal district courts and circuit courts are subject to the Judicial Conduct and Disability Council. With the passage of the Judicial Conduct and Disability Act of 1980, Congress created a process for complaints of disability and misconduct to be addressed. However, just like the previous two case studies, the federal judiciary has tried a few different approaches to address judicial misconduct.

Congress passed the Administrative Office Act in 1939, which created circuit court judicial councils to manage issues that arose in a circuit court (Kastenberg 2017). However,

these councils were not given enough power to appropriately address judicial misconduct. In 1969, U.S. Supreme Court Justice Abe Fortas resigned from the bench because of judicial misconduct (Kenworthy 1969, 4). President Johnson had chosen Fortas as chief justice with the retirement of Chief Justice Warren opening this position. During his confirmation hearing, Of the many subjects brought up during his confirmation hearing, one stood out. He had taught a law course and was paid \$15,000 for doing so by some clients from Fortas' former law firm (Hoffer, Hoffer, and Hull 2016, 388-389). Because of the impeachment threats leveled by members of Congress against the justice, Abe Fortas decided to leave the bench.

Just a few years later, the federal judiciary adopted a judicial conduct code in 1973, but this code lacked a method of enforcement. After Watergate, Congress pushed to create a formal method of code enforcement. At the ABA's 1973 annual convention, federal judicial discipline was discussed because, like Tennessee and Georgia, there was a need to discipline or remove judges for judicial misconduct without using impeachment (Jost 1973a, 40). For ideas of how such a system would be created, members of Congress looked to the states, where, as previously mentioned, many had created their own conduct commissions.

In 1990, Congress decided to create the National Commission on Judicial Discipline and Removal, to brainstorm various ways to improve how the 1980 Act was implemented (Hoffer et al. 2016, 431). The subsequent report, published in 1993, pointed out the issue of congressional oversight being focused predominately on the function of the judiciary and not the issues of misconduct (1993, 9). However, the conclusion of the report was the federal judiciary's approach to judicial misconduct worked well. Though there was not a formal method of judicial misconduct regulation and enforcement for the U.S. Supreme Court, creating such a formal procedure would possibly harm the Court's independence and legitimacy. Despite this, the report recommended that "it may be in the Court's best

interest, as contributing to the public's perception of accountability, to devise an adopt some type of formal procedure for the receipt and disposition of conduct and disability complaints" (Kastenmeier 1993, 71).

To make sure the 1980 Act was still being appropriately implemented, Chief Justice Rehnquist assigned Justice Steven Breyer to chair a committee assessing just this in 2004. In the resulting 2006 report, Breyer and his fellow committee members found the Act was still working well for the federal judiciary (Hoffer et al. 2016 431). However, there was not a recommendation included in this report to have a formal method of dealing with judicial misconduct complaints for the Court. Since this time, there have been a few adjustments to the rules of how judicial misconduct and disability complaints are dealt with, but the changes have not been substantial.

Though this system may work for the lower federal courts, the U.S. Supreme Court is in its own category. In recent years, there has been a focus on various misconduct accusations from refusal to recuse one's self from a case to accepting property and vacations from people with cases before the Court (Twombly 2024). As mentioned previously, though the Court now has its own judicial conduct code, historically there has been a need for an enforcing institution to hold judges and justices accountable to that code. Members of the Court have been allowed to self regulate, referring to the judicial conduct code for federal judges for guidance. Though conduct codes help inform judges what conduct is and is not acceptable, every state and the lower federal courts have seen fit to create an enforcement agency for judges and justices. The same should be created and adopted for the U.S. Supreme Court, as recommended by the 1993 Kastenmeier Report.

Two of the main questions around whether there should be a judicial conduct commission for the Court are who will create such a group and to what level should the public know about the complaints and disciplinary actions taken. In Tennessee, Georgia, and the lower federal judiciary, the legislature has created an enforcement agency made

up of active or former judges, lay people, lawyers, and those chosen by leaders in the legislative and executive branches. Kastenmeier and other members of Congress and the judiciary voiced concerns about the Justices having their potential misconduct reviewed and regulated by lower federal court judges (1993). The question of public transparency is one still being worked out. Both Tennessee and Georgia ran into issues when the entire process of judicial complaint processing and disciplinary action taken was done in secret. However, there is a danger of many frivolous complaints negatively impacting the legitimacy of the judiciary because of the level of visibility and familiarity the general public has with the Court. As history shows, when a major court reform like creating a conduct commission is undertaken, Congress and the federal judiciary work together to create the best outcome.

Conclusion

Judicial misconduct is an issue every state in the union has grappled with at one point or another. Kastenmeier argued an increase in judicial misconduct likely came from the increase in the number of judges (1993). Whatever the level of judicial misconduct, each state and the lower federal judiciary has recognized a conduct code and peer pressure are not enough to hold judges accountable. A formalized process for addressing misconduct is needed to hold judges accountable and ensure the legitimacy of the judiciary. There are a few common themes with which state grapple that are highlighted in the case studies above.

First is the desire for process transparency (Tembeckjian 2007). When the process used to address judicial misconduct is kept from the public, there is a call for greater public access (Marotta 2025). Second is the desire to protect the reputation of many judges accused of misconduct. In both states, when a judicial conduct commission was being considered, the initial complaint process was kept private to protect judges from frivolous complaints ruining the reputation of the judge and the judiciary. However,

each state has had members of the state's legislature argue this protection should not be awarded to judges, since other public officials are not awarded the same privacy. Finally, who gets to appoint whom to a judicial conduct commission? If the judiciary gets to appoint the majority of the members of a commission, is this giving the judiciary too much power to self-regulate? If the legislative and executive branches appoint the majority of members, does this mean the judiciary is not a coequal branch of government? If the bar association is involved in picking members, is the input of an interest group harmful to the institutional legitimacy of a conduct commission? Both Tennessee and Georgia worked to make sure no one branch of government had complete control over the operation of the judicial conduct commission. However, the lower federal courts still deal with misconduct complaints solely within the courts themselves. If there is to be a U.S. Supreme Court Conduct Commission, these are issues either the U.S. Judicial Conference and Congress need to work together to address.

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