



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued May 28, 2021

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## Massachusetts Commission on Judicial Conduct

For the period January 1, 2018 through December 31, 2019





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

May 28, 2021

Mr. Howard V. Neff III, Executive Director  
Massachusetts Commission on Judicial Conduct  
11 Beacon Street, Suite 525  
Boston, MA 02108

Dear Mr. Neff:

I am pleased to provide this performance audit of the Massachusetts Commission on Judicial Conduct. This report details the audit objectives, scope, and methodology for the audit period, January 1, 2018 through December 31, 2019. My audit staff discussed the contents of this report with management of the agency.

I would also like to express my appreciation to the Massachusetts Commission on Judicial Conduct for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump  
Auditor of the Commonwealth

cc: Edward P. Ryan Jr., Esq., Chair of the Massachusetts Commission on Judicial Conduct

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## **EXECUTIVE SUMMARY**

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Massachusetts Commission on Judicial Conduct (CJC) for the period January 1, 2018 through December 31, 2019. The purpose of our audit was to determine whether CJC had screened and investigated complaints within the timeframes established by CJC Rules of Procedure 6(B) and 6(J), respectively.

Our audit revealed no significant instances of noncompliance by CJC that must be reported under generally accepted government auditing standards.

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## OVERVIEW OF AUDITED ENTITY

The Massachusetts Commission on Judicial Conduct (CJC) is an independent agency established by Section 1 of Chapter 211C of the Massachusetts General Laws. According to its website,

*[CJC] is the state agency responsible for investigating complaints alleging that a state court judge has engaged in judicial misconduct or has a disability preventing him or her from properly performing judicial duties.*

*The CJC is also responsible for pursuing, when it is appropriate, remedial action or discipline against state court judges.*

CJC has a nine-member board consisting of three judges, appointed by the Supreme Judicial Court; three lawyers, appointed by the Chief Justice of the Trial Court; and three non-lawyers, appointed by the Governor. These members serve without compensation but are reimbursed for all expenses they reasonably incur in performing their duties, and they are expected to serve six-year terms. An executive director (ED), appointed by the board, oversees CJC's day-to-day activities. The board also determines other ED duties and responsibilities, which include receiving and screening complaints, conducting investigations, and recommending dispositions. Additionally, the ED is responsible for hiring and supervising CJC staff members, maintaining CJC records and statistics, and preparing the annual report of CJC activities.

For fiscal years 2018 and 2019, CJC received direct appropriations<sup>1</sup> of \$760,970 and \$848,768, respectively. As of December 31, 2019, CJC had six employees, including the ED. Its office is at 11 Beacon Street in Boston.

### Complaint Intake Processing and Screening

Complaints may be submitted to CJC by mail (the Postal Service or other delivery services), in person, or electronically on the CJC website. Upon receiving a complaint, the administrative assistant date-stamps it as received and logs it into an electronic spreadsheet. The administrative assistant then assembles documentation for the complaint and emails it to the ED for screening. To determine whether a complaint is in CJC's jurisdiction, the ED reviews it for allegations that, if true, would constitute either

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1. These amounts represent appropriations for account 0321-0001, which funds the general administration of CJC, including salaries and wages, employee benefits, and operating expenses.

misconduct<sup>2</sup> by a judge or a mental or physical disability affecting a judge’s performance. If the complaint alleges neither judicial misconduct nor a disability that would affect the judge’s performance, it is screened out. Rule 6(B) of the CJC Rules of Procedure requires complaints to be screened promptly upon receipt by CJC. Although this rule does not specify a definite period of time, CJC’s internal control plan states that CJC “is committed to screening complaints within, at most, two weeks of receipt.”

According to the ED, CJC receives between 300 and 400 complaints annually. CJC’s 2019 annual report states, “Many complaints are filed with the Commission by parties who are disappointed with how their cases came out and believe the judge was not ‘fair’ or that his or her decision was wrong.” As a result of this, the majority of complaints are dismissed (i.e., screened out) because they are outside CJC’s jurisdiction. CJC dismissed 844 (86%) of the 985 complaints received during the audit period.

### Complaints Received by CJC during the Audit Period\*

Calendar Year	Complaints Received	Complaints Docketed (Screened In)	Complaints Dismissed (Screened Out)
2018	435	56	379
2019	550	85	465
<b>Total</b>	<u>985</u>	<u>141</u>	<u>844</u>

\* We obtained statistical information from CJC’s Complaint Management System.

For screened-out complaints, the ED sends an email to the administrative assistant with a completed screening sheet. The administrative assistant creates a case in the Complaint Management System (CMS),<sup>3</sup> labels it as a possible future complaint, and uploads the complaint documentation to CMS. These possible future complaints about a judge may be reconsidered if additional complaints or details later arise against that judge and put the original complaint into CJC’s jurisdiction.

For screened-in complaints, the ED sends the administrative assistant an email with the complaint and screening form attached, indicating that the complaint is to be docketed. The administrative assistant creates a case in CMS, labels it as a docketed complaint with the appropriate staff assignment, and uploads the complaint documentation to CMS.

2. CJC’s website defines judicial misconduct as including, but not limited to, “a judge creating an appearance of bias, treating a party discourteously, failing to give all interested parties a full opportunity to make their arguments, or failing to make a decision in a prompt, efficient, and fair manner.”

3. During the audit period, CJC used CMS as its case management system. It is a customized application that allows CJC to enter dates (e.g., complaint receipt date, complaint close date) associated with electronic versions of hardcopy correspondence from third parties and CJC-created files.

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In some cases, a complaint alleges judicial misconduct or disability, but the ED has determined the complaint to be one of the following, according to CJC's Rules of Procedure: "frivolous or unfounded," "stale" (having occurred more than a year before the filing of the complaint), or "anonymous." If it is determined to be one of these, the complaint must first be brought before CJC to be screened, and a majority vote must determine whether CJC will proceed with an investigation.

## **Complaint Investigation Process**

Once a case has been screened, docketed, and assigned to an attorney, an investigation is conducted. An investigation may include listening to audio recordings of court proceedings, reviewing transcripts and other documents, interviewing witnesses, and conducting legal research. The assigned CJC investigator prepares a confidential memorandum<sup>4</sup> of the investigation for CJC to review. Investigators have up to 90 days after a complaint is filed to finish evaluating all evidence. For investigations that require more time to complete, the ED can request an extension of time at the next CJC monthly meeting. Additional time for investigations, if needed, is authorized at each meeting.

## **CJC Review**

Before each monthly CJC meeting, the ED prepares a transmittal letter to CJC board members that includes a list of enclosures, which catalogs all completed investigation memoranda forwarded to the board members for the meeting. In addition, s/he includes a case extension list for all investigations that will require more than 90 days to complete. A complete copy of each confidential memorandum is sent with the transmittal letter to the board members. The board members review each investigation report, any response received from the judge, and any other materials deemed relevant. After considering the investigation of a complaint, CJC votes for one of the following actions: (1) to dismiss the matter, (2) to propose to the judge that the complaint be resolved through an agreed disposition, (3) to propose to the judge that the complaint be resolved through a CJC Rule 13 referral to the Supreme Judicial Court, or (4) to proceed to signing a sworn complaint or statement of allegations. (See [Appendix](#) for additional details on CJC actions subsequent to investigations.)

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4. Confidential memoranda prepared by CJC investigators for use by CJC constitute privileged attorney-client materials.

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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Commission on Judicial Conduct (CJC) for the period January 1, 2018 through December 31, 2019.

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

Below is a list of our audit objectives, indicating each question we intended our audit to answer and the conclusion we reached regarding each objective.

Objective	Conclusion
1. Are complaints that CJC receives screened promptly in accordance with Rule 6(B) of the CJC Rules of Procedure and CJC's internal control plan?	Yes
2. Are docketed complaints investigated within 90 days in accordance with Rule 6(J) of the CJC Rules of Procedure?	Yes

To achieve our objectives, we gained an understanding of CJC's internal control environment related to the objectives by reviewing agency rules and procedures, as well as conducting inquiries with CJC's staff and management.

To obtain sufficient, appropriate audit evidence to address our audit objectives, we performed the procedures described below.

### Complaint Screening

To determine whether CJC screened complaints promptly, as required by Rule 6(B) of the CJC Rules of Procedure, we obtained a list of all 985 complaints received during the audit period from CJC's Complaint Management System (CMS). We queried the data and identified 138 complaints for which the



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time between the receipt date and the recorded date<sup>5</sup> in CMS exceeded 14 days.<sup>6</sup> We then selected all 71 complaints where the time between these dates exceeded 21 days<sup>7</sup> for testing. We requested a redacted version of each original complaint and recorded the date CJC had received each one in an electronic spreadsheet. We also examined CJC's internal screening forms or its correspondence with the complainant or judge—all of which were redacted—and recorded the corresponding date of completion (for internal screening forms) or date of transmission (for correspondence) in an electronic spreadsheet. We calculated the number of days between the date each selected complaint was received and the date its screening was completed to determine whether CJC had screened each one promptly. If the number of days was above 14, we performed inquiries with CJC management to determine what had caused the delays.

## **Docketed Complaint Investigation**

To determine whether CJC completed docketed complaint investigations within 90 days or within the timeframe it had authorized,<sup>8</sup> as required by Rule 6(J) of the CJC Rules of Procedure, we obtained from CMS a list of 17 docketed complaints for which the investigations were in progress as of January 1, 2018 and 141 docketed complaints for which the investigations had begun during the audit period. We selected a judgmental, nonstatistical sample of 37 docketed complaints for which the time from the receipt date to the last modification date exceeded 90 days. We requested a redacted version of each original complaint and recorded the dates of receipt by CJC in an electronic spreadsheet. We also examined the executive director's redacted correspondence to CJC, which included the completed investigation list and the case extension list according to the list of enclosures sent before each scheduled CJC meeting, and recorded the corresponding date of transmission in an electronic spreadsheet. We calculated the number of days between the date each of the docketed complaints was received and the date each associated investigation was completed. For durations that exceeded the 90-

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5. CMS does not currently capture the date complaints are screened. However, we learned that complaints are not recorded in CMS until after the screening process is complete. Therefore, for sampling purposes, we used the recorded date in CMS as the assumed screening date.

6. Section B of Rule 6 of CJC's Rules of Procedure states, "The Executive Director shall cause each complaint to be screened promptly upon its receipt." Although the rule does not specify a definite period of time, the CJC internal control plan states, "This office is committed to reviewing complaints it receives and responding to them within, at most, two weeks of receipt." Accordingly, we used a duration of 14 days (i.e., two full calendar weeks) to define "promptly" for our testing.

7. Because of limited staffing at CJC, we selected a duration of 21 days to reduce instances where the delays would likely be attributed to paid time off for agency personnel or competing business priorities (e.g., preparing briefs for CJC).

8. Section J(2) of Rule 6 of CJC's Rules of Procedure states, "If the Executive Director recommends that further investigation is necessary before making this determination, the Commission may vote to continue the investigation on a month-to-month basis."

day timeframe or the extended timeframe authorized by CJC, if any, we performed inquiries with CJC management to determine why the delays had occurred.

When sampling, we used a nonstatistical sampling method, the results of which we could not project to the entire population.

### **Data Reliability**

To determine the reliability of the information obtained from CMS, we conducted interviews and reviewed system processes. Additionally, we performed validity and integrity tests of the data, which included (1) comparing the total number of records provided against agency totals from CJC's annual report, (2) testing for missing complaint identification numbers, (3) testing for invalid or duplicate identifiers, (4) testing for dates outside the audit period, and (5) tracing a sample to source documents. We determined that the information obtained from CMS for our audit period was sufficiently reliable for our audit work.

### **Conclusion**

Our audit revealed no significant instances of noncompliance that must be reported under generally accepted government auditing standards.

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## APPENDIX

### Summary of Commission Actions<sup>9</sup>

#### Ordinary Dismissal or Dismissal with an Expression of Concern

*If the [Massachusetts Commission on Judicial Conduct, or CJC] finds, after investigation of a complaint, that there is no evidence of judicial misconduct, the members of the CJC may vote to dismiss the complaint.*

*If the CJC finds, after investigation of a complaint, that there is no evidence of judicial misconduct or the judge's conduct does not warrant discipline, the CJC may choose to include an "expression of concern" in its dismissal letter to the judge. This is meant to be helpful advice to a judge to assist him or her to avoid any future violation of the Code of Judicial Conduct.*

#### Agreed Disposition

*If the CJC finds that a judge has committed judicial misconduct, under appropriate circumstances, it may propose to a judge that the complaint be resolved through an Agreed Disposition.*

*An Agreed Disposition may take the form of an Informal Adjustment in which the CJC informs or admonishes the judge that certain conduct is or may be cause for discipline. Another form of Agreed Disposition is a Private Reprimand to the judge. An Agreed Disposition requires the agreement of the judge and often includes a period during which the CJC places conditions on the judge's conduct. The conditions may include counseling, education, assignment of a mentor judge, monitoring by the CJC for a specified period of time, voluntary retirement, or other appropriate conditions. In most cases, this type of disposition has a valuable, favorable effect on a judge's conduct.*

#### Direct Submission to the Supreme Judicial Court

*If the CJC finds that a judge has committed judicial misconduct and an Informal Adjustment / Agreed Disposition has not been reached, but the judge does not wish to proceed to a public hearing, the CJC and the judge may agree to submit the matter directly and confidentially to the Supreme Judicial Court pursuant to CJC Rule 13.*

*Under Rule 13A, the CJC and the judge agree upon the facts, but not upon the discipline to be recommended, and the Supreme Judicial Court's decision is final.*

*Under Rule 13B, the CJC and the judge agree upon the recommendation for discipline, but not upon the facts. If the Supreme Judicial Court does not adopt the agreed recommendation, the matter returns to the CJC for further proceedings.*

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9. Text in this appendix is quoted from the Massachusetts Commission on Judicial Conduct website.

## **Sworn Complaint or Statement of Allegations**

*After considering the evidence obtained during the investigation of a complaint, if the complaint cannot be disposed of through dismissal, Agreed Disposition, or a Rule 13 submission, the members of the CJC must then vote whether to proceed to the next level of charging, which is a Statement of Allegations. If the CJC votes to proceed to a Statement of Allegations, a Statement of Allegations is prepared which describes the evidence of misconduct and alleged violations of the Code of Judicial Conduct. The Statement of Allegation is then sent to the judge. The judge then has twenty-one days in which to respond in writing and to request an appearance before the CJC. The judge may be accompanied by counsel.*

*After the twenty-one days allowed for a judge's response to the Statement of Allegations, and after the judge's appearance, if any, the members of the CJC can vote to dispose of the matter by dismissing the complaint, by issuing Formal Charges, or by proposing to the judge that the complaint be disposed of in one of the following three ways:*

- 1. Informal Adjustment;*
- 2. Private Reprimand; or*
- 3. Direct submission to the Supreme Judicial Court under Commission Rule 13.*