

Self-Evaluation Report

State Commission on Judicial Conduct

September 2011

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State Commission on Judicial Conduct Self-Evaluation Report

I. Agency Contact Information

A. Please fill in the following chart.

(Agency Name) Exhibit 1: Agency Contacts				
	Name	Address	Telephone & Fax Numbers	E-mail Address
Agency Head	Seana Willing	300 W. 15 th St., Suite 415 Austin, Tx 78701	Ph: 512-463-5533 Fx:512-463-0511	seana.willing@scj c.texas.gov
Agency's Sunset Liaison	John Brown	300 W. 15 th St., Suite 415 Austin, Tx 78701	Ph: 512-463-5533 Fx:512-463-0511	john.brown@scjc. texas.gov

II. Key Functions and Performance

A. Provide an overview of your agency's mission, objectives, and key functions.

The mission of the State Commission on Judicial Conduct is to (1) protect the public from judicial misconduct or incapacity, (2) promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and (3) encourage judges to maintain high standards of conduct both on and off the bench. The Commission accomplishes this mission through its investigation of allegations of judicial misconduct or incapacity. In cases where a judge is found to have engaged in misconduct or to be permanently incapacitated, the Texas Constitution authorizes the Commission to take appropriate disciplinary action, including issuing private or public sanctions, public censures, suspensions, or making recommendations for removal from office.

B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

Yes. Judicial independence, impartiality, and integrity are the cornerstones of the American justice system. A judicial office is a public trust. In order to function effectively, the judicial system must be assured of the public's faith and confidence. This agency provides a valuable forum and a simple, efficient process wherein anyone may request an investigation into allegations of judicial misconduct or incapacity. Without such a forum, these complainants would likely resort to the political branches of government to address these concerns, where the options available for handling judicial misconduct are extremely limited, time consuming, cumbersome, political, and expensive. In most instances, these entities would be unable to assist many of these complainants, leading to frustration and a lack of confidence in the judiciary. For example, law

enforcement has jurisdiction only over criminal conduct, but judges rarely engage in criminal activity and most complaints filed against judges do not involve allegations of criminal conduct. Although impeachment is a disciplinary measure available exclusively to the legislative branch of government, the only outcome is removal from office, which should be reserved for only the most egregious cases of misconduct. Moreover, it is precisely because the impeachment process itself is so time-consuming, cumbersome, political, and expensive, that judicial conduct commissions came into existence in the first place. Judicial conduct commissions also address the legitimate concerns of the judiciary that providing the other branches of government with the only means of addressing judicial misconduct might result in their overreaching and interfering with judicial independence. By allowing an independent agency, which is part of the judicial branch of government, to investigate complaints against judges, hold hearings, make findings, and take disciplinary action when appropriate, the public is better protected from judicial misconduct or incapacity, judges are provided with an incentive to maintain high standards of conduct, and public confidence in the integrity, competence, impartiality, and independence of the judiciary is preserved.

C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?

See Section VII. Guide to Agency Programs, Section C.

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

Yes, but current procedural rules and the Code of Judicial Conduct remain outdated and will require meaningful revisions and updates in order to be consistent with recent changes in the Texas Constitution, Texas statutes, and federal case law.

Since 2001, several legislative changes to improve the organization's operations have been recommended by the agency, many of which were adopted. The following is a list of all statutory and constitutional changes directly affecting the agency for each Legislative Session starting in 2001 through 2011:

77th Leg. (2001):

- Sec. 33.001(b) amended by adding subdivisions (5) and (6) and subsection (d) added; subsection (c) rewritten [amendments require judges to cooperate with the commission and to comply with provisions of voluntary agreement to resign from office; official misconduct defined to include crimes of moral turpitude]
- Sec. 33.002 amended to add subsection (c)

- Sec. 33.0032 “Conflict of Interest” provisions added
- Sec. 33.004(c) rewritten regarding compensation of special master
- Sec. 33.0041 “Removal of Commission Member; Notification Procedures,” provision added
- Sec. 33.0042 “Requirements for Office or Employment: Information” provision added
- Sec. 33.0043 “Commission Member Training” provisions added
- Sec. 33.0044 “Division of Responsibility” provision added
- Sec. 33.0045 “Equal Employment Opportunity Policy Statement” provision added
- Sec. 33.0046 “State Employee Incentive Program: Information and Training” provision added
- Sec. 33.005(e) rewritten regarding publication of Commission public statements and sanctions in the Texas Bar Journal
- Sec. 33.006(a)(6) amended and subsection (a)(7) added to categories of persons that are immune from liability; now includes special counsel, employees of special counsel, and all other persons appointed by commission to assist in performing its duties
- Sec. 33.007 “Distribution of Materials to Judges and the Public” provisions added
- Sec. 33.008 “Judicial Misconduct Information” provision added
- Sec. 33.021(4) amended to delete language
- Sec. 33.0211 “Complaints” provisions added
- Sec. 33.022 made changes to subsection (c) subdivision (2)(A) and added subdivision (2)(C); changes made in subsection (i); subsection (l) added [the commission can now invite complainants to appear informally and provide testimony; added requirement for commission to adopt procedures for hearing from judges and complainants appearing before commission and to ensure confidentiality of complainant’s identity if requested]
- Sec. 33.023(a) rewritten and language deleted from subsection (b)

- Sec. 33.032 updated statutory references and changed language in subsection (a); deleted language from subsection (b); rewrote subsection (c); added subsections (f), (g), and (h)[made formal proceeding public upon filing of charges]
- Sec. 33.0321 “Confidentiality of Complainant’s Identity” provision added
- Sec. 33.033 changed language in subsections (a) and (b)(1); In subsection (b) rewrote subdivision (2) and added subdivision (5); added subsection (e) [requires commission to inform complainant that a private sanction or order of additional education has been issued against the judge; requires commission to provide complainant with explanation for reasons for dismissal and provide complainant with information regarding reconsideration procedure]
- Sec. 33.034 substituted 60 for 30 days and deleted language in subsection (h)
- Sec. 33.035 “Reconsideration of Complaint” provisions added
- Sec. 33.036 “Certain Disclosure of Information” provisions added
- Sec. 33.037 “Suspension Pending Appeal” provision added
- Sec. 33.038 “Automatic Removal” provision added
- Art. V, sec. 1-a(1) language deleted; subdivision (2) deleted reference to “State Judicial Qualifications Commission”

78th Leg. (2003)

- Sec. 33.051 “Solicitation or Acceptance of Referral Fees or Gifts by Judge; Criminal Penalty” provisions added

79th Leg. (2005)

- Art. V, sec. 1-a(2) rewritten to add constitutional county judge and citizen member, increasing size of Commission from 11 to 13 members; lifted residency restriction for the 5 citizen members allowing the Governor to appoint from anywhere within state; imposed a residency restriction on the county court at law and constitutional county judge members requiring these members to be from different court of appeals districts; in subdivision (5), quorum increased from 6 members to 7 members

80th Leg. (2007)

- Art. V, sec. 1-a(1) rewritten regarding vacancies occurring due to mandatory retirement age of judges

81st Leg. (2009)

- Sec. 33.001(a)(11) amended to include review of censure by Special Court of Review
- Sec. 33.004 added “and Other Employees” to section heading; subsection (d) inserted “special counsel, or any other person appointed by the commission to assist the Commission in performing the duties of the commission” to categories of individuals entitled to reimbursement for necessary travel expenses.
- Sec. 33.0046 repealed
- Sec. 33.034 amended to allow for review or appeal of a public censure issued by the commission following a formal proceeding; changes made to subsections (a), (d), (e), (f), and (g) made.

E. Do any of your agency’s functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?

Yes, but only in very limited circumstances. Law enforcement agencies have exclusive jurisdiction to investigate and prosecute any judge accused of a criminal offense. This agency has only civil jurisdiction, which is further limited to investigating and sanctioning judges accused of willful and/or persistent violations of the Texas Code of Judicial Conduct, and/or conduct described under Article V, sec. 1-a(6) of the Texas Constitution and certain provisions contained in Chapter 33 of the Texas Government Code. A judge who is indicted for a felony (state or federal) or charged with a misdemeanor offense of official misconduct, including a crime of moral turpitude, can be suspended from office by this agency while the criminal prosecution proceeds. If the judge is convicted of, or pleads guilty or no contest to any one of these offenses, state law requires that he/she be automatically removed from office, at which time this agency will likely take no further action since its mission to protect the public would have already been fulfilled by the conviction and subsequent removal from office. In the case of a conviction for an offense that does not constitute official misconduct or a crime of moral turpitude, or an acquittal or dismissal of criminal charges, this agency has the authority and discretion to investigate the underlying facts and circumstances of the case, and if the result is a finding of a willful and/or persistent violation of the Texas Code of Judicial Conduct, and/or conduct described under Article V, sec. 1-a(6) of the Texas Constitution and certain provisions contained in Chapter 33 of the Texas Government Code, under a civil (rather than criminal) standard of proof, the agency may sanction or censure the judge or recommend his/her removal from office. Finally, certain violations of the Texas Election Code, to the extent that they do not involve criminal penalties, can be investigated by both this agency and the Texas Ethics Commission (“TEC”). This agency operates under a civil standard of proof, and is not restricted by a statute of limitations, which provides some advantages over the proceedings conducted by the TEC. However, unlike this agency, the TEC has the ability to fine and assess costs and attorney fees if it prevails in an action against a judge. Because these examples of

overlap are so limited, the agency is easily able to minimize or avoid duplication of efforts by cultivating positive relationships with law enforcement entities and the TEC, and by maintaining ongoing communication with these organizations to the extent allowed by law.

F. In general, how do other states carry out similar functions?

When the Commission was created in 1965, it was the second organization of its kind in the nation. Since then, every state, including the District of Columbia, has implemented a similar judicial conduct organization. In general, all commissions investigate judicial misconduct complaints, although their authority to sanction judges varies.

G. What key obstacles impair your agency’s ability to achieve its objectives?

- (1) Budget cuts and restrictions on general revenue spending continue to impair the agency’s ability to achieve its objectives.
- (2) Incomplete, outdated, and/or inconsistent rules and procedures also impair the agency’s ability to achieve its objectives.
- (3) The size of the board – 13 members – is too large, costly, and unnecessary.

H. Discuss any changes that could impact your agency’s key functions in the future (e.g., changes in federal law or outstanding court cases).

There are no anticipated changes in federal law or outstanding court cases that would impact the agency’s key functions.

I. What are your agency’s biggest opportunities for improvement in the future?

If the Texas Procedural Rules for the Removal or Retirement of Judges and the Texas Code of Judicial Conduct were revised and updated, the agency would be in a better position to serve the public and the judiciary through clear and consistent rules and canons that reflect current changes in the law.

J. In the following chart, provide information regarding your agency’s key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures.

**State Commission on Judicial Conduct
Exhibit 2: Key Performance Measures – Fiscal Year 2010**

Key Performance Measures	FY 2010 Target	FY 2010 Actual Performance	FY 2010 % of Annual Target
Percentage of Cases Disposed	100%	100%	100%

III. History and Major Events

Provide a timeline of your agency's history and key events, including:

- the date your agency was established;
- the original purpose and responsibilities of your agency;
- major changes in responsibilities or statutory authority;
- changes to your policymaking body's name or composition;
- significant changes in state/federal legislation, mandates, or funding;
- significant state/federal litigation that specifically affects your agency's operations; and
- key changes in your agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

In 1965, the Commission on Judicial Qualifications was created by constitutional amendment, making Texas the second state, after California, to create an independent commission to enforce ethical standards for judges. As first approved, the amendment created a nine-member Commission. Its members included citizens (appointed by the Governor), judges (appointed by the Supreme Court), and attorneys (appointed by the State Bar), all requiring Senate confirmation. Jurisdiction was limited to appellate and district judges. The Commission was authorized to hold hearings and to file "formal proceedings" before the Supreme Court to seek the removal or retirement of a judge. It had no authority to issue sanctions.

On May 22, 1966, the Commission held its first meeting.

At the Commission's second meeting on June 25, 1966, it considered its very first complaint against a judge. During its first year of operation, the Commission had no funds and no staff. Members traveled to meetings at their own expense, receiving neither compensation nor reimbursement. Commissioners handled complaints against judges with the cooperation from the Department of Public Safety for investigations and the Attorney General's office for legal research and representation. The executive director of California's Commission on Judicial Performance traveled to Texas to help organize the fledgling operation.

Since those early days, a series of constitutional amendments has expanded and enlarged the size, jurisdiction, and authority of the Commission. In 1970, a constitutional amendment increased the Commission's jurisdiction to include county and county court-at-law judges, justices of the peace, and municipal court judges, as well as judges of special courts. Also, the Commission was authorized to issue private reprimands, or, after a hearing, it could impose a public censure or recommend removal or involuntary retirement.

In 1977, a constitutional amendment changed the agency's name to the State Commission on Judicial Conduct and authorized the Commission to issue public as well as private reprimands. The amendment granted the Commission the authority to suspend a judge from duties, with or without pay, upon indictment by a grand jury for a felony or upon a misdemeanor charge involving official misconduct.

In 1983, legislation was passed that made hearings in formal proceedings public.

In 1984, the voters adopted a constitutional amendment expanding the types of sanctions available to the Commission to include private or public admonitions, warnings, or reprimands. The Commission was also given the option to require a judge to obtain additional education. The Commission's jurisdiction was increased to include retired judges and masters. Commission membership was restructured and increased to include an appellate judge, district judge, county court-at-law judge, justice of the peace, and municipal judge, plus two attorneys and four citizen members, bringing the total number to 11 Commissioners. The county court-at-law judge, justice of the peace, and municipal judge were allowed to be appointed from any part of the state, but all other members were required to reside in different court of appeals districts.

In 1987, legislation provided for the appeal of any sanction, public or private, by a judge, with hearings before a special court of review composed of three appellate judges drawn by lot by the Supreme Court of Texas.

In 1999, the legislature granted immunity from liability to Commission members, special masters, special counsel and Commission employees, while acting within the scope of their official duties. The Legislature also provided for exemptions from discovery and clarified former provisions including those relating to confidentiality.

In 2001, the Commission went through the Sunset Review process, and as a result, numerous statutory changes were made. Among the more significant changes was that formal proceedings, which before this time had been kept confidential until the moment the public hearing convened, became public upon the filing of the charging notice. Changes in the law also included the addition of procedures that allowed complainants to request confidentiality and keep their identities from being revealed to the respondent judge, and procedures that allowed complainants to request a reconsideration of the dismissal of their complaint. The statutes were changed to ensure that more detailed information was given to complainants whose complaints were dismissed or when their complaint resulted in a private sanction. The Commission was also required to distribute certain information about judicial misconduct to the public and judges, but was permitted to share otherwise confidential information with law enforcement and certain appointing entities on a limited basis and when appropriate to protect the public interest. Failure to cooperate with the Commission and failure to comply with the terms of a Voluntary Agreement to Resign in Lieu of Disciplinary became violations of law, and crimes of moral turpitude were added to the definition of official misconduct for purposes of suspending a judge charged with a misdemeanor offense of official misconduct or removing a judge if convicted of a misdemeanor involving official misconduct.

In 2003, the legislature added Section 33.051 to the Texas Government Code, which made it a criminal offense for a judge to solicit or accept a referral fee or gift under certain circumstances. Also, due to significant budget cuts to the agency's funding, staffing was reduced from a cap of 17 FTEs to just 15 FTEs. This was further reduced a few years later to the current staffing cap of 14 FTEs.

In 2005, a constitutional amendment was passed by voters, which added a constitutional county judge and citizen member to the Commission, increasing the size of the board from 11 to 13 members. The amendment also lifted the residency restriction for the 5 citizen members allowing

the Governor to appoint from anywhere within state and imposed a residency restriction on the county court at law judge member and the constitutional county judge member requiring these members to be from different court of appeals districts. As a result of the increase size of Commission membership, the quorum requirement was likewise increased from 6 members to 7 members. However, to date, similar changes to the Texas Procedural Rules for the Removal or Retirement of Judges have not been made, leaving provisions of the rules inconsistent with the Texas Constitution.

In 2009, the legislature provided judges with the right to appeal a public censure issued by the Commission following a formal proceeding. Previously, a public censure issued by the Commission could not be appealed, whereas a public censure issued by the Review Tribunal at a later stage in a formal proceeding could be appealed to the Texas Supreme Court. Without an appellate remedy before the Commission, judges who wished to challenge a public censure were left with no option other than to sue the Commission in federal court. To date, the procedures for an appeal of a public censure have not been drafted by the Texas Supreme Court.

In 2009, and again in 2011, a bill was introduced that would have protected from disclosure the votes, thought processes, discussions and deliberations of Commission members when deciding disciplinary cases. Although the bill was approved by both the House and the Senate in 2009, it was later vetoed by the Governor. Although the same bill was filed in 2011, it was not pursued out of concern that it would face another veto by the Governor. Despite these setbacks, this issue remains a matter of critical importance to the Commission.

IV. Policymaking Structure

A. Complete the following chart providing information on your policymaking body members.

State Commission on Judicial Conduct Exhibit 3: Policymaking Body			
Member Name	Term / Appointed By	Qualification	City
Jorge Rangel	Term Expires 11/19/2011 Appointed by the State Bar	Attorney Member	Corpus Christi
Tom Cunningham	Term Expires 11/19/2013 Appointed by the State Bar	Attorney Member	Houston
Janelle Shepard	Term Expires 11/19/2011 Appointed by the Governor	Citizen Member	Weatherford
Hon. Sid Harle	Term Expires 11/19/2011 Appointed by the Supreme Court	Judge Member	San Antonio
Karry Matson	Term Expires 11/19/2013 Appointed by the Governor	Citizen Member	Georgetown

Patti Johnson	Term Expires 11/19/2011 Appointed by the Governor	Citizen Member	Canyon Lake
Hon. Joel Baker	Term Expires 11/19/2011 Appointed by the Supreme Court	Judge Member	Tyler
Hon. Edward Spillane	Term Expires 11/19/2015 Appointed by the Supreme Court	Judge Member	College Station
Hon. Steve Seider	Term Expires 11/19/2015 Appointed by the Supreme Court	Judge Member	Dallas
Martha Hernandez	Term Expires 11/19/2015 Appointed by the Governor	Citizen Member	Diboll
Diane De La Torre Threadgill	Term Expires 11/19/2015 Appointed by the Governor	Citizen Member	Midlothian
Hon. M. Sue Kurita	Term Expires 11/19/2015 Appointed by the Supreme Court	Judge Member	El Paso
Hon. David Gaultney	Term Expires 11/19/2015 Appointed by the Supreme Court	Judge Member	Beaumont

B. Describe the primary role and responsibilities of your policymaking body.

Technically, Commission members' primary function is to adjudicate cases of judicial misconduct or incapacity, rather than act as a policymaking body. As an adjudicative body, Commission members have the discretion to take appropriate disciplinary action against judges, which may include public or private sanctions, public or private orders of additional education, public censure, or a recommendation for removal from office. The Commission is charged with enforcing the Texas Code of Judicial Conduct, which is promulgated by the Texas Supreme Court, as well as the standards of judicial conduct established by Article V, sec. 1-a(6) of the Texas Constitution. Additionally, Commission members have some oversight authority over the operations of the Commission generally, and are charged with making policy decisions in that regard. The day-to-day administrative, budget, and personnel operations of the agency are delegated to the authority of the agency's Executive Director.

C. How is the chair selected?

The Chair of the Commission is selected on an annual basis by majority vote of the members of the Commission.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

The Commission is governed by Article 5, Sec. 1-a of the Texas Constitution; Chapter 33 of the Texas Government Code; and the Procedural Rules for the Removal or Retirement of Judges. The Commission is an independent, constitutionally created agency within the judicial branch of government created to investigate allegations of judicial misconduct or incapacity. It has its own constitutional and statutory provisions regarding confidentiality, open meetings, and public records. Its actions are civil rather than criminal or administrative.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2010? In FY 2011?

In general, the Commission meets six (6) times annually. It met six (6) times in FY 2010; and six (6) times in FY 2011.

F. What type of training do members of your agency's policymaking body receive?

The Commission holds "orientation" training for newly appointed members and Commissioner/Staff workshops on a periodic basis. Topics for orientation include: the Commission's constitutional and statutory authority, ethics, confidentiality, procedures, conflicts of interest, media relations, recusal issues, indemnification, and financial matters.

Although not required, the agency does notify newly appointed citizen/public members of the training provided by the Governor's office regarding responsibilities of office, matters of public policy, and ethics. In the past, the Commission has coordinated with the Governor's office to have its citizen/public members attend this training.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

The Commission operates under Article V, sec. 1-a of the Texas Constitution, Chapter 33 of the Texas Government Code, and the Texas Procedural Rules for the Removal or Retirement of Judges. All of these laws and rules give guidance to Commission members and staff regarding their respective roles in running the agency.

By statute, there is a division of authority between Commission members' policymaking and adjudicative functions within the agency and the Executive Director's responsibility for the day-to-day administrative, personnel, and budget operations of the agency. Additionally, legal staff, under the direction of the Executive Director, investigates complaints and presents them to the Commission members for decision. The Commission members provide guidelines with respect to how and when cases are to be presented, and maintain the exclusive right to determine the appropriate disposition of every case received by the agency.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

- Case statistics
- Budgets
- Case aging reports
- Annual Reports
- Media Reports

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

The Commission is not a rulemaking agency, and therefore does not receive “input” from the public about what the rules or canons of judicial ethics should be. However, under the Texas Constitution, the Commission is authorized to receive and investigate complaints about judicial misconduct from any source. The Commission has a constitutional duty to keep itself informed of instances of judicial misconduct or incapacity, and may initiate an investigation on its own, or based on anonymous or confidential information. The Commission also reviews information from a variety of media sources, which may result in the initiation of an investigation against a judge.

Commission procedures are guided by constitutional and statutory provisions and by rule. These provisions have confidentiality requirements that necessarily limit public participation in most phases of the process. In the past, individuals with concerns regarding the operations of the agency have testified before the Legislature, written letters or emails to Commission members, Commission Staff, Legislators, the Office of the Governor, the Texas Supreme Court, the Texas Attorney General, the media, as well as to officials in federal government, or posted information in blogs or on websites. On occasion, information will be reported to the agency through survey responses received from judges and/or complainants.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart.

N/A

V. Funding

A. Provide a brief description of your agency's funding.

General Revenue (Fund 0001).

B. List all riders that significantly impact your agency's budget.

General Appropriations Act, 2009.

Rider #3: Formal Proceedings and Appeals. Out of the amounts appropriated above in Strategy A.1.1, Administration and Enforcement, \$21,375 in fiscal year 2010 and \$21,375 in fiscal year 2011 are authorized for the expenses of formal proceedings and appeals initiated under the *Procedural Rules for the Removal or Retirement of Judges* promulgated under the Texas Constitution, Article V, Section 1-a, notwithstanding other funds expended by the Commission for that purpose. Any unexpended balance of funds authorized under this provision on August 31, 2010 may be allocated for the same purpose and for purposes other than formal proceedings and appeals for the fiscal year beginning September 1, 2010.

Rider #4: Investigator Travel. Out of the amounts appropriated above in Strategy A.1.1, Administration and Enforcement, \$5,000 in fiscal year 2010 and \$5,000 in fiscal year 2011 shall be used only for the purpose of conducting investigator travel within the State of Texas to investigate possible cases of judicial misconduct.

C. Show your agency's expenditures by strategy.

State Commission on Judicial Conduct Exhibit 5: Expenditures by Strategy — Fiscal Year 2010 (Actual)		
Goal/Strategy	Total Amount	Contract Expenditures Included in Total Amount
Administration and Enforcement	\$ 932,303	0.00
GRAND TOTAL:	\$ 932,303	0.00

D. Show your agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2010-2011.

**State Commission on Judicial Conduct
Objects of Expense by Program or Function — Fiscal Year 2010**

Object-of-Expense	Program: Administration and Enforcement
Salaries and Wages	835,260
Other Personnel Costs	20,500
Professional Fees and Services	25,575
Consumable Supplies	7,000
Utilities	1,100
Travel	54,600
Rent- Building	2,000
Rent – Machine and Other	2,600
Other Operating Expenses	52,991
Total	1,001,626

E. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.

**State Commission on Judicial Conduct
Exhibit 7: Sources of Revenue — Fiscal Year 2010 (Actual)**

Source	Amount
General Revenue Fund	1,001,626
TOTAL	1,001,626

F. If you receive funds from multiple federal programs, show the types of federal funding sources.

N/A

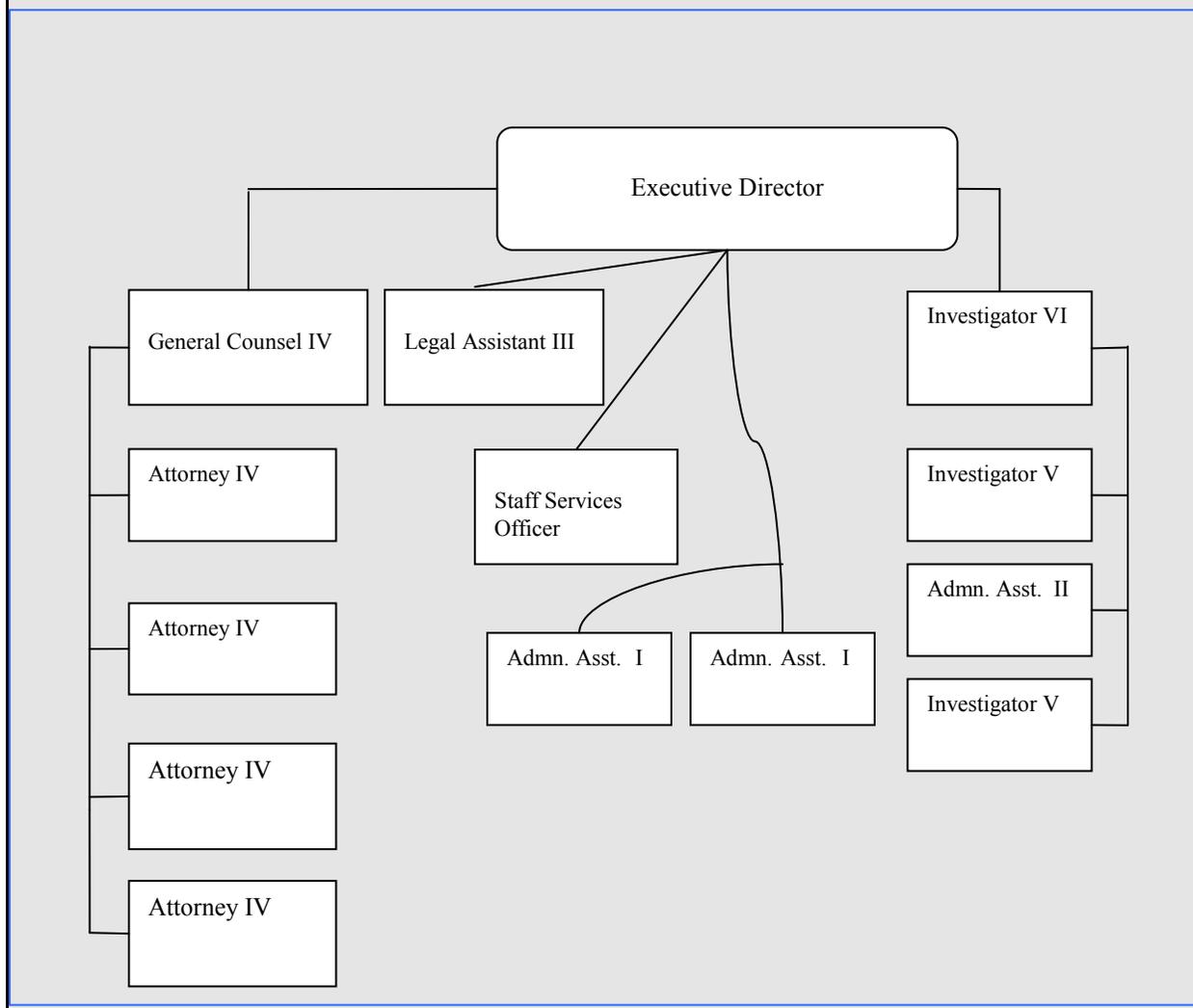
G. If applicable, provide detailed information on fees collected by your agency.

N/A

VI. Organization

A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division.

Administration and Enforcement. 14 FTEs.



B. If applicable, fill in the chart below listing field or regional offices.

N/A

C. What are your agency's FTE caps for fiscal years 2010-2013?

14 for each year.

D. How many temporary or contract employees did your agency have as of August 31, 2010?

Zero.

E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.

**State Commission on Judicial Conduct
Exhibit 11: List of Program FTEs and Expenditures — Fiscal Year 2010**

Program	FTEs as of August 31, 2010	Actual Expenditures
Administration and Enforcement	14	932,303
TOTAL	14	932,303

VII. Guide to Agency Programs

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Administration and Enforcement
Location/Division	Austin
Contact Name	Seana Willing
Actual Expenditures, FY 2010	\$ 932,303
Number of FTEs as of August 31, 2010	14

B. What is the objective of this program or function? Describe the major activities performed under this program.

The mission of the State Commission on Judicial Conduct is to (1) protect the public from judicial misconduct or incapacity, (2) promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and (3) encourage judges to maintain high standards of conduct both on and off the bench. The Commission accomplishes this mission through its investigation of allegations of judicial misconduct or incapacity. In cases where a judge is found to have engaged in misconduct or to be permanently incapacitated, the Texas Constitution authorizes the Commission to take appropriate disciplinary action, including issuing private or public sanctions, public censures, suspensions, or making recommendations for removal from office.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

	FISCAL YEAR 2007	FISCAL YEAR 2008	FISCAL YEAR 2009	FISCAL YEAR 2010
Cases Pending (Beginning FY/To Date)	453/385	385/406	406/445	445/503
Cases Filed	1043	1049	1204	1280
Total Number Of Cases Disposed	1049	1006	1110	1290*
% of Cases Disposed	100.4%	96%	92.1%	100.7%
<i>Average Age of Cases Disposed</i>	5.3 Months	4.7 Months	6.19 Months	5.35 Months
Disciplinary Action (total)	45	56	70	89
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	9	1	2	10
Sanction:				
Public Censure	0	0	0	0
Public Censure and Order of Additional Education	0	0	0	0
Public Reprimand	0	0	11	1
Public Warning	0	1	5	18*
Public Admonition	1	6	2	10
Public sanction and Order of Additional Education	3	4	2	6
Private Reprimand	2	2	0	2
Private Warning	3	6	4	3
Private Admonition	8	6	6	19

Private sanction and Order of Additional Education	7	6	6	6
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	8	8	9	7
Interim Disciplinary Action:				
Order of Suspension [15(a)]	2	4	4	6
Recommendation of Suspension to Supreme Court [15(b)]	0	0	0	0
Cases in Formal Proceedings	2	12	19	0
Amicus Referral	0	0	0	1
Dismissals	1008	966	1063	1208
Requests for Reconsideration Received	48	43	53	106
Reconsideration Granted	3	8	1	0
Reconsideration Denied	45	35	47	104
Pending	0	0	5	2
Cases Appealed to Special Court of Review	0	5	2	16
Informal Hearings Set	24	31	25	21 (includes Aug. 2010 Meeting)
Public Statements Issued	0	1	0	0

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.
N/A

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

See Attachment #2, Annual Report Fiscal Year 2010

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

See Attachment #2, Annual Report Fiscal Year 2010

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General Revenue

FY 2010: \$ 1,001,626

FY 2011: \$ 996,626

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

N/A

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

May share information with law enforcement when appropriate and to the extent allowed by statute.

K. If contracted expenditures are made through this program please provide:

- the amount of those expenditures in fiscal year 2010;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

N/A

L. What statutory changes could be made to assist this program in performing its functions? Explain.

- Section 33.001(b) of the Texas Government Code defines the term “willful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” found in Article V, 1-a(6)A of the Texas Constitution to include several areas of misconduct. In order to assist the SCJC in its enforcement of the Texas Rules of Judicial Education, an amendment to include a judge’s failure to obtain the required judicial education hours is recommended.
- Section 33.035 of the Texas Government Code provides complainants with an opportunity to request a reconsideration of their dismissed complaint. An amendment allowing the Commission to reopen a complaint, for good cause, even if it does not meet the criteria under subsection (a) is recommended, since some complainants may be unable, through no fault of their own, to meet the 30 day deadline for making the request and/or new evidence may be discovered at a later time outside the 30 day deadline. Additionally, if a complaint were dismissed because it did not raise an allegation of judicial misconduct, then a reconsideration of that dismissal under Section 33.035 would be unnecessary. Instead, if a complainant provided “additional” evidence of judicial misconduct, this should be treated as a new complaint regardless of when it is filed. This section should be amended to reflect these recommended changes and clarifications.
- Sections 834.004 and 839.003 of the Texas Government Code, which govern forfeiture of judicial pensions or retirement funds, should be amended to clarify that judges who are removed from office by a Review Tribunal following formal proceedings initiated by the SCJC forfeit their retirement pensions upon removal by the Tribunal or the Texas Supreme Court following appropriate review. See *In re Canales*, 113 S.W.3d 56, 73 (Tex.Rev.Trib. 2003, pet. rev. den’d 2004)
- Judges who are currently eligible to sit by assignment, but who subsequently receive a Public Reprimand, Public Censure or who resign in lieu of discipline should be required to notify the Presiding Judge of their Administrative Region of the SCJC action taken against them and request that their name be removed from the list of judges eligible to sit by assignment. Currently, there is no requirement that the judge request that his/her name be removed from the list and there is consensus among the Presiding Judges that they have no legal authority to remove a judge from the list.
- Section 33.027 of the Government Code protects the discussions, thought processes, or individual votes of members of the Commission, as well as the discussions or thought processes of employees of the Commission, including Special Counsel, from being the subject of a discovery request in formal proceedings or in appeals. However, there is no similar protection of this information at trial. Section 33.032 of the Government Code needs to be amended to include protection of this information at trial and all other times.

- Section 33.034(d) of the Government Code should be amended to expressly reflect that the Examiner or Special Counsel for the Commission shall file the charging document rather than the Commission itself.
- Section 33.034 of the Government Code should also be amended to require the respondent judge who requests the appeal to file an answer to the charge within 15 days of service. Either party should be expressly granted the authority to timely amend their pleadings, as provided by the Civil Rules of Procedure, including the ability to make trial amendments to conform to the facts and evidence introduced at trial. Unless there is a good reason for making the time frames for an appeal so short, the statute should be amended to allow more time for discovery and for holding the trial.
- Sections 33.037 and 33.038 of the Government Code should cross-reference the Local Government Code provisions that require the judge of the convicting court to enter an order of suspension pending appeal and an order of removal upon final conviction.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

See agency website: www.scjc.state.tx.us

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

N/A

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

N/A

VIII. Statutory Authority and Recent Legislation

<p>A. Fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2007 – 2011, or earlier significant Attorney General opinions, that affect your agency’s operations.</p>	
<p>State Commission on Judicial Conduct Exhibit 13: Statutes/Attorney General Opinions</p>	
<p>Statutes</p>	
<p>Citation/Title</p>	<p>Authority/Impact on Agency (e.g., provides authority to license and regulate nursing home administrators”)</p>
<p>Article V, Sec. 1-a, Texas Constitution</p>	<p>Enabling statute; establishes the Commission; defines membership; defines authority and jurisdiction; provides some procedures for investigating and sanctioning or removing judges; provides for confidentiality of proceedings and records before the Commission.</p>
<p>Chapter 33, Tx. Govt. Code</p>	<p>Defines authority and duties of the Commission; sets out various procedures for investigating and sanctioning or removing judges; provides for confidentiality of proceedings and records before the Commission; provides for immunity for Commission members, employees, special counsel, employees of special counsel, special master, and others appointed by the Commission to assist it in its duties;</p>
<p>Attorney General Opinions</p>	
<p>Attorney General Opinion No.</p>	<p>Impact on Agency</p>
<p>N/A</p>	

B. Provide a summary of recent legislation regarding your agency by filling in the chart below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).

(State Commission on Judicial Conduct)
 Exhibit 14: 82nd Legislative Session Chart

Legislation Enacted – 82nd Legislative Session

Bill Number	Author	Summary of Key Provisions
N/A		

Legislation Not Passed – 82nd Legislative Session

Bill Number	Author	Summary of Key Provisions/Reason the Bill Did Not Pass
SB 1722	Senator Juan Hinojosa	Bill would have protected from disclosure the votes, thought processes, discussions and deliberations of Commission members when deciding disciplinary cases. Although the bill was approved by both the House and the Senate in 2009, it was later vetoed by the Governor, who stated at the time that the provision was not needed and that there were adequate protections in place. The same bill was filed in 2011, but it was not pursued out of concern that it would face another veto by the Governor.

IX. Policy Issues

None at this time. However, the agency will supplement if needed. Currently we are aware of no issues that require attention other than the fact that the Texas Procedural Rules for the Removal or Retirement of Judges and the Texas Code of Judicial Conduct need to be revised and updated by the Texas Supreme Court so that the agency may be in a better position to serve the public and the judiciary through clear and consistent rules and canons that reflect current changes in the law. The agency is committed to assisting in the rule drafting process.

X. Other Contacts

A. Fill in the following chart with updated information on people with an interest in your agency, and be sure to include the most recent e-mail address.			
State Commission on Judicial Conduct Exhibit 15: Contacts			
INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions)			
Group or Association Name/ Contact Person	Address	Telephone	E-mail Address
N/A			
INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS (that serve as an information clearinghouse or regularly interact with your agency)			
Group or Association Name/ Contact Person	Address	Telephone	E-mail Address
American Judicature Society, Center for Judicial Ethics Cynthia Gray, Director	3304 N. Broadway, #190 Chicago, IL 60657	(773) 248-6005	cgray@ajs.org
Association of Judicial Disciplinary Counsel Jonathan Coughlan, President	Office of Disciplinary Counsel The Supreme Court of Ohio 250 Civic Center Dr., Suite 325 Columbus, OH 43215-5454	(614) 461-0256	jonathan.coughlan@s c.ohio.gov
LIAISONS AT OTHER STATE AGENCIES (with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)			
Agency Name/Relationship/ Contact Person	Address	Telephone	E-mail Address
Legislative Budget Board Budget Analyst Jeff Pool	P.O. Box 12666 Austin, TX 78711	(512) 936-2587	jeff.pool@lbb.state.tx. us
Governor's Office of Budget and Planning Michael Schofield	P.O. Box 12428 Austin, TX 78711	(512) 463-1778	michael.schofield@go vernor.state.tx.us
Office of the Attorney General Mishell Kneeland Eric Vinson	P.O. Box 12548 Austin, TX 78711	(512) 463-2120	mishell.kneeland@oag .state.tx.us eric.vinson@oag.state. tx.us
Texas Supreme Court Justice Dale Wainwright	P.O. Box 12248 Austin, TX 78711	(512) 463-1332	dale.wainwright@cour ts.state.tx.us

XI. Additional Information

A. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.

N/A

B. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases.

(State Commission on Judicial Conduct) Exhibit 17: Purchases from HUBs				
FISCAL YEAR 2008				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services	4,200	4,200	100 %	20.0%
Other Services	20,881	14,157	67.7 %	33.0%
Commodities	29,798	5,933	19.9 %	12.6%
TOTAL	54,880	24,291	44.2 %	
FISCAL YEAR 2009				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services	4,200	4,200	100 %	20.0%
Other Services	26,793	13,555	50.5 %	33.0%
Commodities	3,037	2,642	86.9 %	12.6%
TOTAL	34,031	20,398	59.9 %	
FISCAL YEAR 2010				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction				11.9%

Building Construction				26.1%
Special Trade				57.2%
Professional Services	4,200	4,200	100 %	20.0%
Other Services	19,324	13,152	68 %	33.0%
Commodities	7,870	7,772	98.7 %	12.6%
TOTAL	31,394	25,124	80 %	

C. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)

Although the agency is small and operates with a limited budget, we do purchase from HUB vendors whenever possible. Supporting the HUB program is a priority for our agency. As evidenced by the above statistics, we far exceed all statewide goals in our purchasing.

D. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)

N/A

E. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.

N/A

F. Fill in the chart below detailing your agency's Equal Employment Opportunity (EEO) statistics.¹

State Commission on Judicial Conduct Exhibit 18: Equal Employment Opportunity Statistics
FISCAL YEAR 2008

¹ The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals are no longer reported as separate groups. Please submit the combined Service/Maintenance category totals, if available.

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration			6.6%		14.2%		37.3%
Professional	6	16.67 %	8.3%	0 %	13.4%	67 %	53.2%
Technical			12.4%		20.2%		53.8%
Administrative Support	4	25 %	11.2%	50 %	24.1%	100 %	64.7%
Service Maintenance	4	0 %	13.8%	25 %	40.7%	50 %	39.0%
Skilled Craft			6.0%		37.5%		4.8%
FISCAL YEAR 2009							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration			9.0%		23.7%		38.8%
Professional	6	16.67 %	11.7%	0 %	19.9%	67 %	54.5%
Technical			17.0%		27.0%		55.6%
Administrative Support	4	25 %	13.2%	50 %	31.9%	100 %	66.2%
Service/Maintenance	4	0 %	12.8%	25 %	44.8%	50 %	39.7%
Skilled Craft			5.1%		46.9%		5.1%
FISCAL YEAR 2010							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration			7.5%		21.17%		37.5%
Professional	5	20 %	9.7%	0 %	18.8%	60 %	53.3%
Technical			13.9%		27.1%		53.9%
Administrative Support	4	25 %	12.7%	50 %	31.9%	75 %	67.1%
Service/Maintenance	5	0 %	14.4%	20 %	49.9%	60 %	39.1%
Skilled Craft			6.6%		46.3%		6.0%

G. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?

Yes.

The Commission on Judicial Conduct is a small agency of only 14 FTE's, which has an adverse impact on its ability to meet all EEO category standards. Efforts have been made to send job postings to referral services which target underutilized populations. Recruitment advertisements contain the phrase: "Equal Opportunity Employer".

XII. Agency Comments

None at this time.

ATTACHMENTS

Attachments Relating to Key Functions, Powers, and Duties

1. Enabling statute
2. Annual reports published by the agency from FY 2006 – 2010.
3. Publications and brochures describing the agency.

Attachments Relating to Policymaking Structure

4. Biographical information (e.g, education, employment, affiliations, and honors) or resumes of all policymaking body members.
5. Agency's most recent rules.

Attachments Relating to Funding

6. Legislative Appropriations Request for FY 2012 – 2013.
7. Annual financial reports from FY 2008 – 2010.
8. Operating budgets from FY 2009 – 2011.

Attachments Relating to Organization

N/A

Attachments Relating to Agency Performance Evaluation

9. State Auditor reports from FY 2007 – 2011 that relate to the agency or any of its functions.

Statutorily Required Reports

10. List of required reports