

1 **JUDICIAL CONDUCT COMMISSION**
2 **AMENDMENTS AND SUPREME COURT**
3 **OVERSIGHT OF JUDGES**

4 2000 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: David Ure**

7 Katherine M. Bryson

8 AN ACT RELATING TO THE JUDICIARY; REVISING THE PROCESSES OF REVIEW OF
9 JUDGES BEFORE THE JUDICIAL CONDUCT COMMISSION AND THE SUPREME
10 COURT; REQUIRING THE COMMISSION TO REPORT A JUDGE'S CRIMINAL
11 MISCONDUCT DIRECTLY TO A PROSECUTOR FOR INVESTIGATION; MAKING
12 CERTAIN COMMISSION ORDERS PUBLIC; ALLOWING THE COMMISSION TO SHARE
13 INFORMATION WITH A CRIMINAL PROSECUTOR; AND MAKING TECHNICAL
14 CHANGES.

15 This act affects sections of Utah Code Annotated 1953 as follows:

16 AMENDS:

17 **78-5-128**, as last amended by Chapter 201, Laws of Utah 1995

18 ENACTS:

19 **78-8-101**, Utah Code Annotated 1953

20 **78-8-104**, Utah Code Annotated 1953

21 **78-8-105**, Utah Code Annotated 1953

22 RENUMBERS AND AMENDS:

23 **78-8-102**, (Renumbered from 78-7-27, as last amended by Chapter 76, Laws of Utah 1998)

24 **78-8-103**, (Renumbered from 78-7-28, as last amended by Chapters 59 and 119, Laws of
25 Utah 1990)

26 **78-8-106**, (Renumbered from 78-7-29, as last amended by Chapter 59, Laws of Utah 1990)

27 **78-8-107**, (Renumbered from 78-7-30, as last amended by Chapters 10 and 237, Laws of

28 Utah 1997)

29 **78-8-108**, (Renumbered from 78-7-31, as enacted by Chapter 8, Laws of Utah 1995, First
30 Special Session)

31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **78-5-128** is amended to read:

33 **78-5-128. Determination of compensation and limits -- Salary survey -- Limits on**
34 **secondary employment.**

35 (1) (a) Every justice court judge shall be paid a fixed compensation determined by the
36 governing body of the respective municipality or county taking into consideration
37 recommendations of the office of the state court administrator as provided in Subsection (2), but
38 in no case may the salary for a justice court judge be an amount greater than 72% of the salary of
39 a district court judge.

40 (b) The compensation shall be comprised of a monthly salary and shall be computed upon
41 the number of hours, days, or other periods of time that the justice court judge is to be available
42 to perform all judicial functions.

43 (2) (a) The state court administrator with the approval of the Judicial Council shall survey
44 areas of the state relating to the functions and activities of the justice courts, taking into
45 consideration the diverse economic factors of the various localities of the justice courts, and
46 develop recommended monthly salaries. These recommendations shall be furnished to the
47 governing bodies of the municipalities and the counties to assist them in determining salaries.

48 (b) The state court administrator may make studies concerned with the economic as well
49 as administrative feasibility to encourage the various political subdivisions to utilize the same
50 person or persons to act as justice court judges for their several jurisdictions and to assist political
51 subdivisions desiring to enter into agreements for that purpose.

52 (3) A justice court judge may not appear as an attorney in any criminal matter in a federal,
53 state, or justice court or appear as an attorney in any justice court or in any juvenile court case
54 involving conduct which would be criminal if committed by an adult.

55 (4) A justice court judge may not hold any office or employment including contracting for
56 services in any justice agency of state government or any political subdivision of the state
57 including law enforcement, prosecution, criminal defense, corrections, or court employment.

58 (5) A justice court judge may not hold any office in any political party or organization

59 engaged in any political activity or serve as an elected official in state government or any political
60 subdivision of the state.

61 (6) A justice court judge may not own or be employed by any business entity which
62 regularly litigates in small claims court.

63 (7) Any judge who violates this section [~~may be~~] is subject to removal by the Judicial
64 Conduct Commission under [~~Section 78-7-28~~] Title 78, Chapter 8, Judicial Conduct Commission.

65 Section 2. Section **78-8-101** is enacted to read:

66 **78-8-101. Definitions.**

67 As used in this chapter:

68 (1) "Commission" means the Judicial Conduct Commission established by Utah
69 Constitution Article VIII, Section 13 and Section 78-8-102.

70 (2) (a) "Complaint" includes a formal written complaint against a judge.

71 (b) Complaint also includes the executive director of the commission's written statement
72 of the allegation based on reliable information received in any form, from any source, that alleges,
73 or from which a reasonable inference can be drawn that a judge is in violation of any provision of
74 Utah Constitution Article VIII, Section 13, if there is no written complaint from another person.

75 (3) Except as more specifically provided in Subsections 78-8-104(1) and (2), "judge"
76 includes a justice of the Supreme Court, an appellate court judge, a district court judge, an active
77 senior judge, a juvenile court judge, a justice court judge, an active senior justice court judge, and
78 a judge pro tempore of any court of this state.

79 Section 3. Section **78-8-102**, which is renumbered from Section 78-7-27 is renumbered
80 and amended to read:

81 [~~78-7-27~~]. **78-8-102. Judicial Conduct Commission -- Creation -- Members --**
82 **Terms -- Vacancies -- Voting -- Expenses.**

83 (1) The membership of the Judicial Conduct Commission established by Article VIII,
84 Section 13 of the Utah Constitution consists of:

85 (a) two members of the House of Representatives to be appointed by the speaker of the
86 House of Representatives for a two-year term, not more than one of whom may be of the same
87 political party as the speaker;

88 (b) two members of the Senate to be appointed by the president of the Senate for a
89 two-year term, not more than one of whom may be of the same political party as the president;

90 (c) three members from the board of commissioners of the Utah State Bar, who shall be
91 appointed by the board of commissioners of the Utah State Bar for a four-year term;

92 (d) two persons not members of the Utah State Bar, who shall be appointed by the
93 governor, with the advice and consent of the Senate, for four-year terms, not more than one of
94 whom may be of the same political party as the governor; and

95 (e) one judge, and one alternate judge, of a trial court of record, to be selected by the
96 nonjudicial members of the [~~Judicial Conduct~~] commission for four-year terms. The judge and
97 the alternate judge shall coordinate attendance for meetings so that, if possible, at least one is in
98 attendance at each meeting. If both judges are in attendance at a meeting, the alternate judge shall
99 not be counted for quorum purposes nor vote on any issue before the commission.

100 (2) The terms of the members shall be staggered so that approximately half of the
101 commission expires every two years. The judges shall be appointed so that the terms expire in
102 staggered two year increments.

103 (3) If a judge serving on the commission is disqualified from participating in any
104 proceeding, the [~~Judicial Conduct~~] commission shall select a substitute judge of a trial court of
105 record.

106 (4) The [~~Judicial Conduct~~] commission shall establish guidelines and procedures for the
107 disqualification of any member from consideration of any matter.

108 (5) (a) When a vacancy occurs in the membership for any reason, the replacement shall
109 be appointed by the appointing authority for the unexpired term.

110 (b) If the appointing authority fails to appoint a replacement, the commissioners who have
111 been appointed may act as a commission under all the provisions of this section.

112 (6) Six members of the commission shall constitute a quorum. Any action of a majority
113 of the quorum constitutes the action of the commission.

114 (7) (a) (i) Members who are not government employees shall receive no compensation or
115 benefits for their services, but may receive per diem and expenses incurred in the performance of
116 the member's official duties at the rates established by the Division of Finance under Sections
117 63A-3-106 and 63A-3-107.

118 (ii) Members may decline to receive per diem and expenses for their service.

119 (b) (i) State government officer and employee members who do not receive salary, per
120 diem, or expenses from their agency for their service may receive per diem and expenses incurred

121 in the performance of their official duties from the commission at the rates established by the
122 Division of Finance under Sections 63A-3-106 and 63A-3-107.

123 (ii) State government officer and employee members may decline to receive per diem and
124 expenses for their service.

125 (c) Legislators on the [committee] commission shall receive compensation and expenses
126 as provided [by law] in Section 36-2-2 and Legislative Joint Rule 15.03.

127 (d) (i) The chair shall be allowed the actual expenses of secretarial services, the expenses
128 of services for either a court reporter or a transcriber of electronic tape recordings, and other
129 necessary administrative expenses incurred in the performance of the duties of the commission.

130 (ii) The chair shall schedule all complaints to be heard by the commission and may not act
131 to dismiss any complaint without the approval of the commission.

132 (iii) The chair shall refer all policy matters to the commission.

133 (8) Upon a majority vote of the quorum, the commission may:

134 (a) employ a director, legal counsel, investigators, and other staff to assist the commission;
135 and

136 (b) incur other reasonable and necessary expenses within the authorized budget of the
137 commission and consistent with the duties of the commission.

138 Section 4. Section **78-8-103**, which is renumbered from Section 78-7-28 is renumbered
139 and amended to read:

140 ~~[78-7-28].~~ **78-8-103. Grounds for reprimand, censure, suspension, removal, or**
141 **involuntary retirement of justice, judge, or justice court judge -- Suspension.**

142 ~~[(1) A justice, judge, or justice court judge of any court of this state in accordance with the~~
143 ~~procedure prescribed in this section, may be removed from office, suspended, censured,~~
144 ~~involuntarily retired, or publicly or privately reprimanded for:]~~

145 (1) The commission may issue an order, subject to the Supreme Court's review and
146 issuance of a final order implementing, rejecting, or modifying the commission's order, that any
147 judge be reprimanded, censured, suspended, removed from office, or involuntarily retired, for:

148 (a) action which constitutes willful misconduct in office;

149 (b) final conviction of a crime punishable as a felony under state or federal law;

150 (c) willful and persistent failure to perform judicial duties;

151 (d) disability that seriously interferes with the performance of judicial duties; or

152 (e) conduct prejudicial to the administration of justice which brings a judicial office into
153 disrepute.

154 (2) In addition to the reasons specified in Subsection (1), [~~justice court judges may be~~
155 ~~removed from office, suspended, censured, involuntarily retired, or publicly or privately~~
156 ~~reprimanded for failure]~~ the Supreme Court shall order the reprimand, censure, suspension,
157 removal, or involuntary retirement of any justice court judge who fails to obtain and maintain
158 certification from the Judicial Council for attendance at required judicial training courses or [for
159 failure] who fails to meet the minimum requirements for office, including residency. [(3) The
160 Supreme Court on its own motion may]

161 (3) (a) The Supreme Court may, on its own motion, suspend a [~~justice, judge, or justice~~
162 ~~court]~~ judge from office without salary or compensation if [~~he pleads guilty, no contest to, or is~~
163 ~~found guilty]~~ the judge is convicted of a crime punishable as a felony under state or federal law.

164 (b) If [~~he]~~ the judge is not convicted [~~or if the conviction is reversed, his]~~ of the criminal
165 charge, the suspension is terminated and [he] the judge shall be paid [his] the salary or
166 compensation for the period of suspension.

167 Section 5. Section **78-8-104** is enacted to read:

168 **78-8-104. Criminal investigation of a judge -- Administrative leave.**

169 (1) (a) If the commission, during the course of its investigation into an allegation of
170 judicial misconduct, receives information upon which a reasonable person might conclude that a
171 misdemeanor or felony under state or federal law has been committed by an appellate court judge,
172 a district court judge, an active senior judge, a juvenile court judge, a justice court judge, an active
173 senior justice court judge, or a judge pro tempore, the commission shall refer the allegation to the
174 chief justice of the Supreme Court.

175 (b) The chief justice of the Supreme Court may place the appellate court judge, district
176 court judge, active senior judge, juvenile court judge, justice court judge, active senior justice court
177 judge, or judge pro tempore on administrative leave with pay if the chief justice has a reasonable
178 basis to believe that the alleged crime occurred, that the appellate court judge, district court judge,
179 active senior judge, juvenile court judge, justice court judge, active senior justice court judge, or
180 judge pro tempore committed the crime, and that crime was either a felony or a misdemeanor
181 which conduct may be prejudicial to the administration of justice or which brings a judicial office
182 into disrepute.

183 (2) (a) If the commission, during the course of its investigation into an allegation of
184 judicial misconduct, receives information upon which a reasonable person might conclude that a
185 misdemeanor or felony under state or federal law has been committed by the chief justice of the
186 Supreme Court, the commission shall refer the allegation to two justices of the Supreme Court.

187 (b) Two justices of the Supreme Court may place the chief justice of the Supreme Court
188 on administrative leave with pay if the two justices have a reasonable basis to believe that the
189 alleged crime occurred, that the chief justice committed the crime, and that crime was either a
190 felony or a misdemeanor which conduct may be prejudicial to the administration of justice or
191 which brings a judicial office into disrepute.

192 (3) If a judge is or has been criminally charged or indicted for a class A misdemeanor or
193 any felony under state or federal law and if the Supreme Court has not already acted under
194 Subsection (1) or (2), the appropriate member or members of the Supreme Court as provided in
195 Subsection (1) or (2), shall place the judge on administrative leave, with pay, pending the outcome
196 of the criminal proceeding.

197 (4) The chief justice of the Supreme Court or two justices of the Supreme Court who
198 ordered the judge on administrative leave with pay, shall order the reinstatement of the judge:

199 (a) if the prosecutor to whom the allegations are referred by the commission as required
200 under Section 78-8-107, determines no charge or indictment should be filed; or

201 (b) after final disposition of the criminal case, if the judge is not convicted of a criminal
202 charge.

203 Section 6. Section **78-8-105** is enacted to read:

204 **78-8-105. Referral of attorney misconduct.**

205 If the commission, during the course of its investigation into an allegation of judicial
206 misconduct, receives information upon which a reasonable person might conclude that a member
207 of the state bar has violated one of the Rules of Professional Conduct, the commission shall refer
208 that information about the attorney to the Utah State Bar.

209 Section 7. Section **78-8-106**, which is renumbered from Section 78-7-29 is renumbered
210 and amended to read:

211 **[78-7-29]. 78-8-106. Involuntary disability retirement or removal of a judge.**

212 (1) [A justice, judge, or justice court judge] The commission shall recommend and issue
213 an order for the removal or involuntary retirement of a judge of any court of this state, in

214 accordance with the procedure [~~prescribed~~] outlined in this [~~chapter~~] section, [~~may be retired~~] for
215 a disability that seriously [~~interfering~~] interferes with the performance of [~~his~~] the judge's judicial
216 duties and which is, or is likely to become, of a permanent character.

217 [~~Any justice, judge, or justice court judge desiring to retire on grounds of disability shall~~
218 ~~certify to the commission his request for retirement and the nature of his disability.~~]

219 (2) The commission [~~may~~] shall order a medical examination and report.

220 [~~(2)~~] (3) [~~Action of the Judicial Conduct~~] The commission in [~~approving or disapproving~~
221 ~~an application for disability retirement~~] recommending an order of involuntary retirement or
222 removal of a judge for a disability, shall [~~be based upon~~] base it on the evaluation and
223 recommendations submitted by one or more medical examiners or physicians, including an
224 examination of essential statements submitted by either bar or judicial associations or committees
225 certifying that:

226 (a) the [~~justice, judge, or justice court~~] judge is mentally or physically disabled and [~~totally~~
227 ~~incapacitated for the further performance of his assigned job~~] this disability seriously interferes
228 with the performance of the judge's judicial duties; and

229 (b) [~~his~~] the judge's incapacity is likely to continue and be permanent and that [~~he~~] the
230 judge should be [~~retired~~] involuntarily retired or removed.

231 (4) (a) The Supreme Court shall review the commission's proceedings as to both law and
232 fact and may permit the introduction of additional evidence.

233 (b) After its review, the Supreme Court shall issue its order implementing, rejecting, or
234 modifying the commission's order.

235 Section 8. Section **78-8-107**, which is renumbered from Section 78-7-30 is renumbered
236 and amended to read:

237 **[78-7-30]. 78-8-107. Authority of Judicial Conduct Commission -- Procedure for**
238 **reprimand, censure, removal, suspension, or involuntary retirement -- Disclosure of criminal**
239 **misconduct, orders made public.**

240 (1) (a) The [~~Judicial Conduct~~] commission [~~is authorized to receive~~] shall receive and may
241 investigate any complaint [~~directly from the complainant~~] against a judge.

242 (b) (i) If the commission receives a complaint that alleges conduct that may be a
243 misdemeanor or felony under state or federal law, it shall, unless the allegation is plainly frivolous,
244 immediately refer the allegation of criminal misconduct and any information relevant to the

245 potential criminal violation to the local prosecuting attorney having jurisdiction to investigate and
246 prosecute the crime.

247 (ii) If the local prosecuting attorney receiving the allegation of criminal misconduct of a
248 judge practices before that judge on a regular basis, or has a conflict of interest in investigating the
249 crime, the local prosecuting attorney shall refer this allegation of criminal misconduct to another
250 local or state prosecutor who would not have that same disability or conflict.

251 (iii) The commission may concurrently proceed with its investigation of the complaint
252 without waiting for the resolution of the criminal investigation by the prosecuting attorney.

253 (2) ~~[(a) After an]~~ During the course of any investigation, the [Judicial Conduct]
254 commission:

255 (a) shall refer any information relating to the criminal conduct alleged and any evidence
256 which relates to the allegation to which the judge has been accused, unless plainly frivolous, to the
257 local prosecuting attorney as provided in Subsection (1)(b);

258 (b) may order a [format] hearing to be held concerning the [removal,] reprimand, censure,
259 suspension, [censure, public reprimand] removal, or involuntary retirement of a [justice, judge, or
260 justice court] judge[-];

261 (c) may, with the written consent of the judge being investigated, resolve a complaint by
262 issuing an informal order of reprimand which shall be disclosed to:

263 (i) the person who filed the complaint;

264 (ii) the judge who is the subject of the complaint;

265 (iii) the Judicial Council for its use in the judicial recertification process;

266 (iv) the Supreme Court for issuance of its final order as provided in Subsection (7); and

267 (v) the person or entity who appointed the judge; and

268 (d) may, with the written consent of the judge receiving the informal order of reprimand
269 under Subsection (2)(c), publicly disclose the commission's informal order of reprimand.

270 ~~[(b)]~~ (3) The commission shall provide the [justice or] judge with all information
271 necessary to prepare an adequate response or defense, which may include the identity of the
272 complainant.

273 ~~[(c)]~~ (4) (a) A [format] hearing may be conducted before a quorum of the commission.

274 (b) Any finding or order shall be made upon a majority vote of the quorum.

275 ~~[(3)-(a)]~~ (5) Alternatively, the commission may appoint three special masters, who are

276 [~~justices or~~] judges of courts of record, to hear and take evidence in the matter and to report to the
277 commission.

278 [(b)] (6) (a) After the [~~formal~~] hearing or after considering the record and report of the
279 masters, if the commission finds good cause, it shall order the [~~removal,~~] reprimand, censure,
280 suspension, [~~censure, reprimand~~] removal, or involuntary retirement of the [~~justice, judge, or~~
281 ~~justice court~~] judge.

282 (b) When a commission order is sent to the Supreme Court, it shall also be:

283 (i) publicly disclosed; and

284 (ii) sent to the person or entity who appointed the judge.

285 (c) Subsection (6)(b)(i) does not apply to a commission informal order of reprimand.

286 [(4) ~~Rules and procedures in effect prior to July 1, 1996, are exempt from Title 63, Chapter~~
287 ~~46a, Utah Administrative Rulemaking Act. On or after July 1, 1996, the commission shall make~~
288 ~~rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, governing~~
289 ~~the issuance of private reprimands, including rules for disclosing the information to the Judicial~~
290 ~~Council. A private reprimand may be issued only if a formal hearing is not conducted regarding~~
291 ~~this matter.~~]

292 [(5) (a)] (7) [~~Prior to~~] Before the implementation of any commission order issued under
293 [~~Subsection (1) or (2)] Subsections (2) and (6), the Supreme Court shall review the [~~record of the~~]
294 commission's proceedings [~~on the~~] as to both law and [~~facts~~] fact and may permit the introduction
295 of additional evidence. [~~The~~] After briefs have been submitted and any oral argument made, the
296 Supreme Court shall [~~enter~~], within 90 days, issue its order implementing, rejecting, or modifying [~~;~~
297 ~~or rejecting~~] the commission's order.~~

298 [(b) (i)] (8) (a) Upon an order for involuntary retirement, the [~~justice,~~] judge [~~;~~ or ~~justice~~
299 ~~court judge~~] shall retire with the same rights and privileges as if the [~~justice,~~] judge [~~;~~ or ~~justice~~
300 ~~court judge~~] retired pursuant to statute.

301 [(ii)] (b) Upon an order for removal, the [~~justice,~~] judge [~~;~~ or ~~justice court judge~~] shall be
302 removed from office and his salary or compensation ceases from the date of the order.

303 [(iii)] (c) Upon an order for suspension from office, the [~~justice,~~] judge [~~;~~ or ~~justice court~~
304 ~~judge~~] may not perform any judicial functions and may not receive a salary for the period of
305 suspension.

306 [(6)] (9) (a) The transmission, production, or disclosure of any complaints, papers, or

307 testimony in the course of proceedings before the [~~Judicial Conduct~~] commission, the masters
308 appointed under Subsection [~~(2)~~] (5), or the Supreme Court [~~are privileged~~] may not be introduced
309 in any civil action.

310 (b) The transmission, production, or disclosure of any complaints, papers, or testimony in
311 the course of proceedings before the commission or the masters appointed under Subsection (5)
312 may be introduced in any criminal action. This information shall be shared with the prosecutor
313 conducting a criminal investigation or prosecution of a judge as provided in Subsections (1) and
314 (2).

315 (c) Complaints, papers, [~~or~~] testimony, or the record of the commission's confidential
316 hearing may not be disclosed by the commission, masters, or any court until the Supreme Court
317 has entered its final order in accordance with this section, except:

318 [~~(a)~~] (i) upon order of the Supreme Court;

319 [~~(b)~~] (ii) upon the request of the judge [~~or justice~~] who is the subject of the complaint; [~~or~~]

320 (iii) as provided in Subsection (9)(d); or

321 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and (2).

322 [~~(c)~~] (d) Upon the dismissal of a complaint or allegation against a judge [~~or justice~~], the
323 dismissal shall be disclosed without consent of the judge [~~or justice~~] to the person who filed the
324 complaint [~~or allegation~~].

325 [~~(7)~~] (10) [Rules and procedures in effect prior to July 1, 1996, are exempt from Title 63,
326 Chapter 46a, Utah Administrative Rulemaking Act, on or after July 1, 1996, the Judicial Conduct]
327 The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative
328 Rulemaking Act, outlining its procedures and the appointment of masters.

329 (11) A [justice, judge, or justice court] judge who is a member of the commission or the
330 Supreme Court may not participate in any proceedings involving the [justice's, judge's, or justice
331 court] judge's own removal or retirement.

332 [~~(8)~~] (12) Retirement for [disability or] involuntary retirement as provided [by Sections
333 78-7-28 through 78-7-30] in this chapter shall be processed through the Utah State Retirement
334 Office, and the judge retiring shall meet the requirements for retirement as specified in [Sections
335 78-7-28 through 78-7-30] this chapter.

336 Section 9. Section **78-8-108**, which is renumbered from Section 78-7-31 is renumbered
337 and amended to read:

338 ~~[78-7-31].~~ **78-8-108.** **Subpoena power of the commission -- Testimony --**
339 **Contempt.**

340 (1) The [~~Judicial Conduct~~] commission may issue subpoenas in aid of an investigation of
341 a complaint filed with the commission. The subpoena shall have the same authority as an order
342 of the district court. Commission subpoenas shall be issued in the manner and form prescribed for
343 subpoenas by the Utah Rules of Civil Procedure. Commission subpoenas shall be served in the
344 manner prescribed for subpoenas by the Utah Rules of Civil Procedure.

345 (2) The commission may administer oaths and compel testimony under oath in aid of an
346 investigation of a complaint filed with the commission and at [~~formal~~] hearings before the
347 commission.

348 (3) If a person fails to comply with a subpoena, or if a person appears before the
349 commission and refuses to testify to a matter upon which the person may be lawfully questioned,
350 the person is in contempt of the commission, and the commission may file in the district court a
351 motion for an order to show cause why the penalties established in Title 78, Chapter 32, Contempt,
352 should not be imposed.

Legislative Review Note
as of 2-9-00 12:23 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel