

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

30 (2) In addition to the reasons specified in Subsection (1), the Supreme Court shall order
31 the reprimand, censure, suspension, removal, or involuntary retirement of any justice court
32 judge who fails to obtain and maintain certification from the Judicial Council for attendance at
33 required judicial training courses or who fails to meet the minimum requirements for office,
34 including residency.

35 (3) (a) The Supreme Court may, on its own motion, suspend or remove a judge from
36 office [~~without salary or compensation if the judge is convicted of a crime punishable as a~~
37 ~~felony under state or federal law.] if the judge:~~

38 [~~(b) If the judge is not convicted of the criminal charge, the suspension is terminated~~
39 ~~and the judge shall be paid the salary or compensation for the period of suspension.]~~

40 (i) develops a physical or mental disability that seriously interferes with the
41 performance of his judicial duties **§ AS PROVIDED IN THE UTAH CONSTITUTION, ARTICLE VIII,**
41a **SECTION 13, PARAGRAPH 4 § :**

42 (ii) becomes unqualified to hold the judicial office **§ AS PROVIDED IN THE UTAH**
42a **CONSTITUTION, ARTICLE VIII, SECTIONS 7 AND 10, AND SECTION 78-7-2 § ; or**

43 (iii) brings the judicial office into disrepute by engaging in conduct prejudicial to the
44 administration of justice **§ AS PROVIDED IN THE UTAH CONSTITUTION, ARTICLE VIII, SECTION 13,**
44a **PARAGRAPH 5 § .**

45 (b) The Supreme Court shall provide notice to the judge and an opportunity to **h** [rebut the
46 allegations] BE HEARD h .

47 Section 2. Section **78-8-104** is amended to read:

48 **78-8-104. Criminal investigation of a judge -- Administrative leave.**

49 (1) (a) If the commission, during the course of its investigation into an allegation of
50 judicial misconduct, receives information upon which a reasonable person might conclude that
51 a misdemeanor or felony under state or federal law has been committed by an appellate court
52 judge, a district court judge, an active senior judge, a juvenile court judge, a justice court judge,
53 an active senior justice court judge, or a judge pro tempore, the commission shall immediately
54 refer the allegation and any information relevant to the potential criminal violation to the chief
55 justice of the Supreme Court.

56 (b) The chief justice of the Supreme Court may place the appellate court judge, district
57 court judge, active senior judge, juvenile court judge, justice court judge, active senior justice
58 court judge, or judge pro tempore on administrative leave with **h** [, without, or with reduced] OR
58a **WITHOUT h** pay if

59 the chief justice has a reasonable basis to believe that the alleged crime occurred, that the
 60 appellate court judge, district court judge, active senior judge, juvenile court judge, justice
 61 court judge, active senior justice court judge, or judge pro tempore committed the crime, and
 62 that crime was either a felony or a misdemeanor which conduct may be prejudicial to the
 63 administration of justice or which brings a judicial office into disrepute.

64 (2) (a) If the commission, during the course of its investigation into an allegation of
 65 judicial misconduct, receives information upon which a reasonable person might conclude that
 66 a misdemeanor or felony under state or federal law has been committed by the chief justice of
 67 the Supreme Court, the commission shall immediately refer the allegation and any information
 68 relevant to the potential criminal violation to two justices of the Supreme Court.

69 (b) Two justices of the Supreme Court may place the chief justice of the Supreme
 70 Court on administrative leave with ~~h~~ ~~[, without, or with reduced]~~ **OR WITHOUT h** pay if the two
 70a justices have a
 71 reasonable basis to believe that the alleged crime occurred, that the chief justice committed the
 72 crime, and that crime was either a felony or a misdemeanor which conduct may be prejudicial
 73 to the administration of justice or which brings a judicial office into disrepute.

74 (3) (a) If a judge is or has been criminally charged or indicted for a class A
 75 misdemeanor or any felony under state or federal law and if the Supreme Court has not already
 76 acted under Subsection (1) or (2), the appropriate member or members of the Supreme Court as
 77 provided in Subsection (1) or (2), shall place the judge on administrative leave[;] with ~~h~~ ~~[, without,~~
 78 **or with reduced]** **OR WITHOUT h** pay[;] pending the outcome of the criminal proceeding.

79 (b) The administrator of the courts shall, for the duration of the administrative leave § [or
 80 **suspension] § , withhold all employer and employee contributions required under Sections**
 81 **49-17-301 and 49-18-301.**

82 (c) If the judge is not convicted of the criminal charge, and if after an investigation and
 83 final disposition of the case by the Judicial Conduct Commission, the judge is reinstated by the
 84 Supreme Court as provided in Subsection (4), then the judge shall be paid the salary or
 85 compensation for the period of § [suspension] ADMINISTRATIVE LEAVE § , and all contribution
 85a withheld under Subsection

86 (3)(b) shall be deposited in accordance with Sections 49-17-301 and 49-18-301.

87 (4) The chief justice of the Supreme Court or two justices of the Supreme Court who
 88 ordered the judge on administrative leave [~~with pay,~~] shall order the reinstatement of the judge:

89 (a) if the prosecutor to whom the allegations are referred by the commission as

90 required under Section 78-8-107, determines no charge or indictment should be filed; or

91 (b) after final disposition of the criminal case, if the judge is not convicted of a
92 criminal charge and if the Judicial Conduct Commission has not ordered the removal of the
93 judge.

94 Section 3. Section **78-8-107** is amended to read:

95 **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**
96 **misconduct or information -- Procedure for reprimand, censure, removal, suspension, or**
97 **involuntary retirement -- Certain orders made public.**

98 (1) (a) The commission shall receive and investigate any complaint against a judge.

99 (b) (i) If the commission receives a complaint that alleges conduct that may be a
100 misdemeanor or felony under state or federal law, it shall, unless the allegation is plainly
101 frivolous, immediately refer the allegation of criminal misconduct and any information
102 relevant to the potential criminal violation to the local prosecuting attorney having jurisdiction
103 to investigate and prosecute the crime.

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

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

111 (2) During the course of any investigation, the commission:

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

115 (b) may order a hearing to be held concerning the reprimand, censure, suspension,
116 removal, or involuntary retirement of a judge;

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

119 (i) the person who filed the complaint;

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

- 121 (iii) the Judicial Council for its use in the judicial recertification process;
- 122 (iv) the Supreme Court for issuance of its final order as provided in Subsection (7); and
- 123 (v) the person who appointed the municipal justice court judge; and
- 124 (d) may, with the written consent of the judge receiving the informal order of
- 125 reprimand under Subsection (2)(c), publicly disclose the commission's informal order of
- 126 reprimand.
- 127 (3) The commission shall provide the judge with all information necessary to prepare
- 128 an adequate response or defense, which may include the identity of the complainant.
- 129 (4) (a) A hearing may be conducted before a quorum of the commission.
- 130 (b) Any finding or order shall be made upon a majority vote of the quorum.
- 131 (5) Alternatively, the commission may appoint three special masters, who are judges of
- 132 courts of record, to hear and take evidence in the matter and to report to the commission.
- 133 (6) (a) After the hearing or after considering the record and report of the masters, if the
- 134 commission finds by a preponderance of the evidence that misconduct occurred, it shall order
- 135 the formal reprimand, censure, suspension, removal, or involuntary retirement of the judge.
- 136 (b) When a commission order is sent to the Supreme Court, it shall also be:
- 137 (i) publicly disclosed; and
- 138 (ii) sent to the ~~h~~ **ENTITY THAT h** appointed the judge.
- 139 (c) Subsection (6)(b)(i) does not apply to a commission informal order of reprimand.
- 140 (7) When the commission issues any order, including a stipulated order, that is sent to
- 141 the Supreme Court, the record shall include:
- 142 (a) the original complaint and any other information regarding violations, or potential
- 143 violations, of the Code of Judicial Conduct;
- 144 (b) the notice of charges;
- 145 (c) all correspondence and other documents which passed between the commission and
- 146 the judge;
- 147 (d) all letters which may explain the charges;
- 148 (e) all affidavits, subpoenas, and testimony of witnesses;
- 149 (f) the commission's findings of fact and conclusions of law;
- 150 (g) a transcript of any proceedings, including hearings on motions;
- 151 (h) a transcript of the evidence;

152 (i) a summary of all the complaints dismissed by the commission against the judge
153 which contained allegations or information similar in nature to the misconduct under review by
154 the Supreme Court;

155 (j) a summary of all the orders implemented, rejected, or modified by the Supreme
156 Court against the judge; and

157 (k) all information in the commission's files on any informal resolution, including any
158 letter of admonition, comment, or caution, that the commission issued against the judge prior to
159 May 1, 2000.

160 (8) (a) Before the implementation, rejection, or modification of any commission order
161 issued under Subsections (2), (6), and (7) the Supreme Court shall:

162 (i) review the commission's proceedings as to both law and fact and may permit the
163 introduction of additional evidence; and

164 (ii) consider the number and nature of previous orders issued by the Supreme Court
165 and may increase the severity of the order based on a pattern or practice of misconduct or for
166 any other reason that the Supreme Court finds just and proper.

167 (b) In recommending any order, including stipulated orders, the commission may not
168 place, or attempt to place, any condition or limitation upon the Supreme Court's constitutional
169 power to:

170 (i) review the commission's proceedings as to both law and fact; or

171 (ii) implement, reject, or modify a commission order.

172 (c) After briefs have been submitted and any oral argument made, the Supreme Court
173 shall, within 90 days, issue its order implementing, rejecting, or modifying the commission's
174 order[; and].

175 (9) (a) Upon an order for involuntary retirement, the judge shall retire with the same
176 rights and privileges as if the judge retired pursuant to statute.

177 (b) Upon an order for removal, the judge shall be removed from office and his salary or
178 compensation ceases from the date of the order.

179 (c) Upon an order for suspension from office, the judge may not perform any judicial
180 functions and may not receive a salary for the period of suspension.

181 (10) (a) The transmission, production, or disclosure of any complaints, papers, or
182 testimony in the course of proceedings before the commission, the masters appointed under

183 Subsection (5), or the Supreme Court may not be introduced in any civil action.

184 (b) The transmission, production, or disclosure of any complaints, papers, or testimony
185 in the course of proceedings before the commission or the masters appointed under Subsection
186 (5) may be introduced in any criminal action, consistent with the Utah Rules of Evidence. This
187 information shall be shared with the prosecutor conducting a criminal investigation or
188 prosecution of a judge as provided in Subsections (1) and (2).

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

192 (i) upon order of the Supreme Court;

193 (ii) upon the request of the judge who is the subject of the complaint;

194 (iii) as provided in Subsection (10)(d); or

195 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and
196 (2).

197 (d) Upon the dismissal of a complaint or allegation against a judge, the dismissal shall
198 be disclosed without consent of the judge to the person who filed the complaint.

199 (11) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah
200 Administrative Rulemaking Act, outlining its procedures and the appointment of masters.

201 (12) A judge who is a member of the commission or the Supreme Court may not
202 participate in any proceedings involving the judge's own removal or retirement.

203 (13) Retirement for involuntary retirement as provided in this chapter shall be
204 processed through the Utah State Retirement Office, and the judge retiring shall meet the
205 requirements for retirement as specified in this chapter.

Legislative Review Note

as of 1-28-03 6:44 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0119

Judicial Conduct Commission Revisions

03-Feb-03

1:30 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst