

1                                   **LIMITATIONS ON INFORMAL JUDICIAL**  
2   **REPRIMANDS**

3   2003 GENERAL SESSION  
4   STATE OF UTAH

5   **Sponsor: David L. Thomas**

6   **This act modifies provisions regarding the Judicial Conduct Commission, limiting the**  
7   **issuance of informal reprimands to certain circumstances.**

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

9   AMENDS:

10           **78-8-107**, as last amended by Chapter 331, Laws of Utah 2002

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

12           Section 1. Section **78-8-107** is amended to read:

13           **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**  
14   **misconduct or information -- Procedure for reprimand, censure, removal, suspension, or**  
15   **involuntary retirement -- Certain orders made public.**

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

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

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

27           (iii) The commission may concurrently proceed with its investigation of the complaint



28 without waiting for the resolution of the criminal investigation by the prosecuting attorney.

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

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

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

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

37 (i) the person who filed the complaint;

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

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

40 (iv) the Supreme Court for issuance of its final order as provided in Subsection [~~7~~]  
41 (8); and

42 (v) the person who appointed the municipal justice court judge; and

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

46 (3) An informal order of reprimand may only be issued if:

47 (a) a notice of formal proceedings has not yet been served on the judge;

48 (b) no previous informal order of reprimand has been issued to the judge during the  
49 judge's current term of office; and

50 (c) the misconduct is not a substantial violation of the Code of Judicial Conduct.

51 [~~3~~] (4) The commission shall provide the judge with all information necessary to  
52 prepare an adequate response or defense, which may include the identity of the complainant.

53 [~~4~~] (5) (a) A hearing may be conducted before a quorum of the commission.

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

55 [~~5~~] (6) Alternatively, the commission may appoint three special masters, who are  
56 judges of courts of record, to hear and take evidence in the matter and to report to the  
57 commission.

58 [~~6~~] (7) (a) After the hearing or after considering the record and report of the masters,

59 if the commission finds by a preponderance of the evidence that misconduct occurred, it shall  
60 order the reprimand, censure, suspension, removal, or involuntary retirement of the judge.

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

62 (i) publicly disclosed; and

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

64 (c) Subsection [~~(6)~~] (7)(b)(i) does not apply to a commission informal order of  
65 reprimand.

66 [~~(7)~~] (8) When the commission issues any order, including a stipulated order, that is  
67 sent to the Supreme Court, the record shall include:

68 (a) the original complaint and any other information regarding violations, or potential  
69 violations, of the Code of Judicial Conduct;

70 (b) the notice of charges;

71 (c) all correspondence and other documents which passed between the commission and  
72 the judge;

73 (d) all letters which may explain the charges;

74 (e) all affidavits, subpoenas, and testimony of witnesses;

75 (f) the commission's findings of fact and conclusions of law;

76 (g) a transcript of any proceedings, including hearings on motions;

77 (h) a transcript of the evidence;

78 (i) a summary of all the complaints dismissed by the commission against the judge

79 which contained allegations or information similar in nature to the misconduct under review by  
80 the Supreme Court;

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

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

86 [~~(8)~~] (9) (a) Before the implementation, rejection, or modification of any commission  
87 order issued under Subsections (2), [~~(6)~~] (7), and [~~(7)~~] (8) the Supreme Court shall:

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

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

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

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

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

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

101 [~~(9)~~] (10) (a) Upon an order for involuntary retirement, the judge shall retire with the  
102 same rights and privileges as if the judge retired pursuant to statute.

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

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

107 [~~(10)~~] (11) (a) The transmission, production, or disclosure of any complaints, papers,  
108 or testimony in the course of proceedings before the commission, the masters appointed under  
109 Subsection [~~(5)~~] (6), or the Supreme Court may not be introduced in any civil action.

110 (b) The transmission, production, or disclosure of any complaints, papers, or testimony  
111 in the course of proceedings before the commission or the masters appointed under Subsection  
112 [~~(5)~~] (6) may be introduced in any criminal action, consistent with the Utah Rules of Evidence.  
113 This information shall be shared with the prosecutor conducting a criminal investigation or  
114 prosecution of a judge as provided in Subsections (1) and (2).

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

118 (i) upon order of the Supreme Court;

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

120 (iii) as provided in Subsection [~~(10)~~] (11)(d); or

121 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and  
122 (2).

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

125 [~~(11)~~] (12) The commission shall make rules in accordance with Title 63, Chapter 46a,  
126 Utah Administrative Rulemaking Act, outlining its procedures and the appointment of masters.

127 [~~(12)~~] (13) A judge who is a member of the commission or the Supreme Court may not  
128 participate in any proceedings involving the judge's own removal or retirement.

129 [~~(13)~~] (14) Retirement for involuntary retirement as provided in this chapter shall be  
130 processed through the Utah State Retirement Office, and the judge retiring shall meet the  
131 requirements for retirement as specified in this chapter.

---

---

**Legislative Review Note**  
as of 2-14-03 7:33 AM

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

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that provisions of this bill can be implemented with existing resources.

---

**Individual and Business Impact**

No fiscal impact.

---

**Office of the Legislative Fiscal Analyst**