

JUDICIAL CONDUCT COMMISSION

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill amends the Judicial Conduct Commission procedures to make conforming amendments to a recent Utah Supreme Court opinion.

Highlighted Provisions:

This bill:

- ▶ prohibits the commission or its staff from initiating a complaint against a judge; and
- ▶ repeals the statutory authority of the Judicial Conduct Commission to issue private,

informal orders of reprimand.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-8-101, as last amended by Chapter 331, Laws of Utah 2002

78-8-107, as last amended by Chapters 196 and 281, Laws of Utah 2003

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

Section 1. Section **78-8-101** is amended to read:

78-8-101. Definitions.

As used in this chapter:

(1) "Commission" means the Judicial Conduct Commission established by Utah

Constitution Article VIII, Section 13 and Section 78-8-102.

(2) (a) "Complaint" includes:

(i) a formal written complaint against a judge[-]; or

~~[(b) "Complaint" also includes the executive director of the commission's written statement of the]~~

(ii) an allegation based on reliable information received in any form, from any source, that alleges, or from which a reasonable inference can be drawn that a judge is in violation of any provision of Utah Constitution Article VIII, Section 13.

(b) "Complaint" does not include an allegation initiated by the commission or its staff.

(3) "Investigation" means an inquiry into an allegation of misconduct, including a search for and examination of evidence concerning the allegations, which begins upon the receipt of a complaint and is completed when either the complaint is dismissed by a majority vote of the commission or when an order is sent to the Supreme Court for its review in accordance with Utah Constitution Article VIII, Section 13.

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

Section 2. Section **78-8-107** is amended to read:

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

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

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

(ii) If the local prosecuting attorney receiving the allegation of criminal misconduct of a

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

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

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

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

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

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

~~[(i) the person who filed the complaint;]~~

~~[(ii) the judge who is the subject of the complaint;]~~

~~[(iii) the Judicial Council for its use in the judicial recertification process;]~~

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

~~[(v) the person who appointed the municipal justice court judge; and]~~

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

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

(4) (a) A hearing may be conducted before a quorum of the commission.

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

(5) Alternatively, the commission may appoint three special masters, who are judges of courts of record, to hear and take evidence in the matter and to report to the commission.

(6) (a) After the hearing or after considering the record and report of the masters, if the commission finds by a preponderance of the evidence that misconduct occurred, it shall order the

[format] reprimand, censure, suspension, removal, or involuntary retirement of the judge.

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

- (i) publicly disclosed; and
- (ii) sent to the entity that appointed the judge.

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

(7) When the commission issues any order, including a stipulated order, that is sent to the Supreme Court, the record shall include:

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

(b) the notice of charges;

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

(d) all letters which may explain the charges;

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

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

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

(h) a transcript of the evidence;

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

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

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

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

(i) review the commission's proceedings as to both law and fact and may permit the

introduction of additional evidence; and

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

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

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

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

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

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

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

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

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

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

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

- (i) upon order of the Supreme Court;
- (ii) upon the request of the judge who is the subject of the complaint;
- (iii) as provided in Subsection (10)(d);
- (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and (2); or
- (v) this information is subject to audit by the Office of Legislative Auditor General, and any records released to the Office of Legislative Auditor General shall be maintained as confidential, except:
 - (A) for information that has already been made public; and
 - (B) the final written and oral audit report of the Legislative Auditor General may present information about the Judicial Conduct Commission as long as it contains no specific information that would easily identify a judge, witness, or complainant.
- (d) Upon the dismissal of a complaint or allegation against a judge, the dismissal shall be disclosed without consent of the judge to the person who filed the complaint.
- (11) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, outlining its procedures and the appointment of masters.
- (12) A judge who is a member of the commission or the Supreme Court may not participate in any proceedings involving the judge's own removal or retirement.
- (13) Retirement for involuntary retirement as provided in this chapter shall be processed through the Utah State Retirement Office, and the judge retiring shall meet the requirements for retirement as specified in this chapter.