

JUDICIAL CONDUCT COMMISSION

AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael G. Waddoups

House Sponsor: Neal B. Hendrickson

LONG TITLE

General Description:

This bill defines "judge" to include the chief justice of the Utah Supreme Court and makes technical amendments.

Highlighted Provisions:

This bill:

- ▶ defines "judge" to include the chief justice of the Utah Supreme Court;
- ▶ deletes a requirement that the chair and executive director of the Judicial Conduct Commission refer all policy matters to the commission;
- ▶ deletes a provision that required members of the commission to draw lots in 2002 to determine which members would serve two and four-year terms; and
- ▶ makes other technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-8-101, as last amended by Chapter 293, Laws of Utah 2004

78-8-102, as last amended by Chapters 176 and 331, Laws of Utah 2002



28 78-8-104, as last amended by Chapter 281, Laws of Utah 2003

29 78-8-105, as enacted by Chapter 148, Laws of Utah 2000

30 78-8-107, as last amended by Chapter 293, Laws of Utah 2004

31

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

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

34 **78-8-101. Definitions.**

35 As used in this chapter:

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

38 (2) (a) "Complaint" includes:

39 (i) a ~~[format]~~ written complaint against a judge; or

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

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

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

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

54 Section 2. Section 78-8-102 is amended to read:

55 **78-8-102. Judicial Conduct Commission -- Creation -- Members -- Terms --**
56 **Vacancies -- Voting -- Expenses -- Power of chair.**

57 (1) The membership of the ~~[Judicial Conduct Commission]~~ commission established by
58 Article VIII, Section 13 of the Utah Constitution consists of:

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

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

64 (c) two members of, and in good standing with, the Utah State Bar, who shall be
65 appointed by a majority of the Utah Supreme Court for a four-year term, none of whom may
66 reside in the same judicial district;

67 (d) three persons not members of the Utah State Bar, who shall be appointed by the
68 governor, with the consent of the Senate, for four-year terms, not more than two of whom may
69 be of the same political party as the governor;

70 (e) one member of the Utah Court of Appeals to be selected by a majority of the Utah
71 Supreme Court for a four-year term; and

72 (f) one judge from a trial court of record to be selected by a majority of the Utah
73 Supreme Court for a four-year term.

74 (2) (a) The terms of the members shall be staggered so that approximately half of the
75 commission expires every two years.

76 (b) All members of the commission shall serve no longer than eight years.

77 (3) The commission shall establish guidelines and procedures for the disqualification
78 of any member from consideration of any matter.

79 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
80 be appointed by the appointing authority for the unexpired term.

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

83 (5) Six members of the commission shall constitute a quorum. Any action of a majority
84 of the quorum constitutes the action of the commission.

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

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

90 (b) (i) State government officer and employee members who do not receive salary, per
91 diem, or expenses from their agency for their service may receive per diem and expenses
92 incurred in the performance of their official duties from the commission at the rates established
93 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

96 (c) Legislators on the commission shall receive compensation and expenses as
97 provided in Section 36-2-2 and Legislative Joint Rule 15.03.

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

102 (ii) At each commission meeting, the chair and executive director shall schedule all
103 complaints to be heard by the commission and present any information from which a
104 reasonable inference can be drawn that a judge has committed misconduct so that the
105 commission may determine by majority vote of a quorum whether the executive director shall
106 draft a written complaint in accordance with Subsection 78-8-101(2)(b).

107 (iii) The chair and executive director [~~shall refer all policy matters to the commission~~
108 ~~and~~] may not act to dismiss any complaint without a majority vote of a quorum of the
109 commission.

110 (7) It is the responsibility of the chair and the executive director to ensure that the
111 commission [~~comply~~] complies with the procedures of the commission.

112 (8) The chair shall be nonvoting except in the case of a tie vote.

113 (9) Upon a majority vote of the quorum, the commission may:

114 (a) employ an executive director, legal counsel, investigators, and other staff to assist
115 the commission; and

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

118 [~~(10) Members serving on January 1, 2002, shall serve from the date of their~~
119 ~~appointment until June 30, 2002. After July 1, 2002, members shall be appointed as provided~~
120 ~~in Section 78-8-102, except that those appointed shall draw by lot for terms of office of two~~

121 and four years so that the terms of office of approximately half of the commission members
122 shall expire every two years.]

123 Section 3. Section **78-8-104** is amended to read:

124 **78-8-104. Criminal investigation of a judge -- Administrative leave.**

125 (1) (a) If the commission, during the course of its investigation into an allegation of
126 judicial misconduct, receives information upon which a reasonable person might conclude that
127 a misdemeanor or felony under state or federal law has been committed by [~~an appellate court
128 judge, a district court judge, an active senior judge, a juvenile court judge, a justice court judge,
129 an active senior justice court judge, or a judge pro tempore;~~] a judge other than the chief justice
130 of the Supreme Court, the commission shall immediately refer the allegation and any
131 information relevant to the potential criminal violation to the chief justice of the Supreme
132 Court.

133 (b) The chief justice of the Supreme Court may place [~~the appellate court judge, district
134 court judge, active senior judge, juvenile court judge, justice court judge, active senior justice
135 court judge, or judge pro tempore~~] the judge on administrative leave with or without pay if the
136 chief justice has a reasonable basis to believe that the alleged crime occurred, that the appellate
137 court judge, district court judge, active senior judge, juvenile court judge, justice court judge,
138 active senior justice court judge, or judge pro tempore committed the crime, and that crime was
139 either a felony or a misdemeanor which conduct may be prejudicial to the administration of
140 justice or which brings a judicial office into disrepute.

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

146 (b) Two justices of the Supreme Court may place the chief justice of the Supreme
147 Court on administrative leave with or without pay if the two justices have a reasonable basis to
148 believe that the alleged crime occurred, that the chief justice committed the crime, and that
149 crime was either a felony or a misdemeanor which conduct may be prejudicial to the
150 administration of justice or which brings a judicial office into disrepute.

151 (3) (a) If a judge is or has been criminally charged or indicted for a class A

152 misdemeanor or any felony under state or federal law and if the Supreme Court has not already
153 acted under Subsection (1) or (2), the appropriate member or members of the Supreme Court as
154 provided in Subsection (1) or (2), shall place the judge on administrative leave with or without
155 pay pending the outcome of the criminal proceeding.

156 (b) The administrator of the courts shall, for the duration of the administrative leave,
157 withhold all employer and employee contributions required under Sections 49-17-301 and
158 49-18-301.

159 (c) If the judge is not convicted of the criminal charge, and if after an investigation and
160 final disposition of the case by the Judicial Conduct Commission, the judge is reinstated by the
161 Supreme Court as provided in Subsection (4), then the judge shall be paid the salary or
162 compensation for the period of administrative leave, and all contributions withheld under
163 Subsection (3)(b) shall be deposited in accordance with Sections 49-17-301 and 49-18-301.

164 (4) The chief justice of the Supreme Court or two justices of the Supreme Court who
165 ordered the judge on administrative leave shall order the reinstatement of the judge:

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

168 (b) after final disposition of the criminal case, if the judge is not convicted of a
169 criminal charge and if the [~~Judicial Conduct Commission~~] commission has not ordered the
170 removal of the judge.

171 Section 4. Section **78-8-105** is amended to read:

172 **78-8-105. Referral of attorney misconduct.**

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

178 Section 5. Section **78-8-107** is amended to read:

179 **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**
180 **misconduct or information -- Procedure for reprimand, censure, suspension, removal, or**
181 **involuntary retirement -- Certain orders made public.**

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

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

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

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

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

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

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

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

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

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

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

207 (6) (a) After the hearing or after considering the record and report of the masters, if the
208 commission finds by a preponderance of the evidence that misconduct occurred, it shall order
209 the reprimand, censure, suspension, removal, or involuntary retirement of the judge.

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

211 (i) publicly disclosed; and

212 (ii) sent to the entity that appointed the judge.

213 (7) When the commission issues any order, including a stipulated order, that is sent to

214 the Supreme Court, the record shall include:

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

217 (b) the ~~[notice of]~~ charges;

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

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

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

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

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

224 (h) ~~[a transcript of the evidence]~~ a copy of each exhibit admitted into evidence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

265 (i) upon order of the Supreme Court;

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

267 (iii) as provided in Subsection (10)(d);

268 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and
269 (2); or

270 (v) this information is subject to audit by the Office of Legislative Auditor General,
271 and any records released to the Office of Legislative Auditor General shall be maintained as
272 confidential, except:

273 (A) for information that has already been made public; and

274 (B) the final written and oral audit report of the Legislative Auditor General may
275 present information about the ~~[Judicial Conduct Commission]~~ commission as long as it

276 contains no specific information that would easily identify a judge, witness, or complainant.

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

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

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

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

Legislative Review Note

as of 1-9-06 10:22 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel