

**JUDICIAL CONDUCT COMMISSION AMENDMENTS  
AND SUPREME COURT OVERSIGHT OF JUDGES**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: David Ure**

Katherine M. Bryson

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

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

AMENDS:

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

ENACTS:

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

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

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

RENUMBERS AND AMENDS:

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

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

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

**78-8-107**, (Renumbered from 78-7-30, as last amended by Chapters 10 and 237, Laws of Utah 1997)

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

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

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

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

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

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

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

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

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

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

(5) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political

subdivision of the state.

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

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

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

**CHAPTER 8. JUDICIAL CONDUCT COMMISSION AND  
SUPREME COURT OVERSIGHT OF JUDGES**

**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 a formal written complaint against a judge.

(b) "Complaint" also includes the executive director of the commission's written statement of the 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, if there is no written complaint from another person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) action which constitutes willful misconduct in office;
- (b) final conviction of a crime punishable as a felony under state or federal law;
- (c) willful and persistent failure to perform judicial duties;
- (d) disability that seriously interferes with the performance of judicial duties; or
- (e) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

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

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

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

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

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

(1) (a) If the commission, during the course of its investigation into an allegation of judicial

misconduct, receives information upon which a reasonable person might conclude that a misdemeanor or felony under state or federal law has been committed by 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, or a judge pro tempore, the commission shall refer the allegation to the chief justice of the Supreme Court.

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

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

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

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

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

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

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

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

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

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

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

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

(1) ~~[A justice, judge, or justice court judge]~~ The commission shall recommend and issue an order for the removal or involuntary retirement of a judge of any court of this state, in accordance with the procedure [prescribed] outlined in this [chapter] section, [may be retired] for a disability that seriously [interfering] interferes with the performance of [his] the judge's judicial duties and which is, or is likely to become, of a permanent character.

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

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

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

(a) the ~~[justice, judge, or justice court]~~ judge is mentally or physically disabled and ~~[totally incapacitated for the further performance of his assigned job]~~ this disability seriously interferes with



the performance of the judge's judicial duties; and

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

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

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

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

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

(1) (a) The ~~[Judicial Conduct]~~ commission ~~[is authorized to receive]~~ shall receive and may investigate any complaint ~~[directly from the complainant]~~ 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) ~~[(a) After an]~~ During the course of any investigation, the [Judicial Conduct] 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);

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

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

~~[(c)]~~ (4) (a) A ~~[formal]~~ 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.

~~[(3) (a)]~~ (5) Alternatively, the commission may appoint three special masters, who are ~~[justices or]~~ judges of courts of record, to hear and take evidence in the matter and to report to the commission.

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

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

(i) publicly disclosed; and

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

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

~~[(4) Rules and procedures in effect prior to July 1, 1996, are exempt from Title 63, Chapter~~

~~46a, Utah Administrative Rulemaking Act. On or after July 1, 1996, the commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, governing the issuance of private reprimands, including rules for disclosing the information to the Judicial Council. A private reprimand may be issued only if a formal hearing is not conducted regarding this matter.]~~

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

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

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

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

~~[(6)] (9) (a)~~ The transmission, production, or disclosure of any complaints, papers, or testimony in the course of proceedings before the ~~[Judicial Conduct]~~ commission, the masters appointed under Subsection ~~[(2)] (5)~~, or the Supreme Court ~~[are privileged]~~ 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, [or] 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:

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

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

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

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

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

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

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

~~[(8)]~~ (12) Retirement for ~~[disability or]~~ involuntary retirement as provided ~~[by Sections 78-7-28 through 78-7-30]~~ 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 ~~[Sections 78-7-28 through 78-7-30]~~ this chapter.

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

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

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

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

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