

JUDICIAL CONDUCT COMMISSION**AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

This act modifies provisions relating to the Judicial Conduct Commission and the Elections Code. It changes the composition of the commission to include a member of the Utah Court of Appeals. It adds the requirement to decide whether certain information alleging misconduct should be investigated. It also requires the commission to immediately refer an allegation involving criminal conduct to the Utah Supreme Court. It also establishes an eight year term limit on commission members. In addition, this act provides that the burden of proof shall be a preponderance of the evidence, and that certain information shall be included in the record when the commission sends any order to the Supreme Court for review. It reiterates the Supreme Court's ability to modify any order of the commission, and also requires that the Supreme Court provide a written summary for publication in the Voter Information Pamphlet.

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

AMENDS:

20A-7-702, as last amended by Chapters 65 and 166, Laws of Utah 2001

78-8-101, as enacted by Chapter 148, Laws of Utah 2000

78-8-102, as renumbered and amended by Chapter 148, Laws of Utah 2000

78-8-104, as enacted by Chapter 148, Laws of Utah 2000

78-8-107, as renumbered and amended by Chapter 148, Laws of Utah 2000

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

Section 1. Section **20A-7-702** is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than ten-point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before July 15 at 5 p.m.;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets; and

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor;

(h) a description provided by the Judicial Council of the selection and retention process for judges, including, in the following order:

- (i) a description of the judicial selection process;
- (ii) a description of the judicial performance evaluation process;
- (iii) a description of the judicial retention election process;
- (iv) a list of the criteria and minimum standards of judicial performance evaluation;
- (v) the names of the judges standing for retention election; and
- (vi) for each judge:
 - (A) the counties in which the judge is subject to retention election;
 - (B) a short biography of professional qualifications and a recent photograph;
 - (C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;
 - (D) a statement provided by the Utah Supreme Court identifying the cumulative number of ~~[public orders issued by]~~ informal reprimands, when consented to by the judge in accordance with Section 78-7-107(2)(d), formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a [statement of the basis for each order] detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received; and
 - (E) a statement identifying whether or not the judge was certified by the Judicial Council;
- (vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic format, the responses for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in 1% increments;
 - (B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;
- (i) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

- (j) voter registration information, including information on how to obtain an absentee ballot;
- (k) a list of all county clerks' offices and phone numbers; and
- (l) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)

(signed) _____
Lieutenant Governor"

(3) The lieutenant governor shall:

(a) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state not more than 40 nor less than 15 days before the day fixed by law for the election;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 2. 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 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) "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.

~~[(3)]~~ (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 3. Section **78-8-102** is amended to read:

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]~~ four-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]~~ four-year term, not more than one of whom may be of the same political party as the president;

(c) ~~[three]~~ two members ~~[from the board of commissioners]~~ of, and in good standing with, the Utah State Bar, who shall be appointed by ~~[the board of commissioners of the Utah State Bar for a four-year term]~~ a majority of the Utah Supreme Court for a four-year term, none of whom may reside in the same judicial district;

(d) ~~[two]~~ three 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]~~ two 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;]~~ member of the Utah Court of Appeals to be selected by ~~[the nonjudicial members of the commission]~~ a majority of the Utah Supreme Court for a four-year term; ~~and [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.]~~

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

(2) (a) 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.]~~

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

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

~~[(4)]~~ (3) The commission shall establish guidelines and procedures for the disqualification of any member from consideration of any matter.

~~[(5)]~~ (4) (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)]~~ (5) Six members of the commission shall constitute a quorum. Any action of a majority of the quorum constitutes the action of the commission.

~~[(7)]~~ (6) (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 commission shall receive compensation and expenses as provided 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]~~ At each commission meeting, the chair and executive director shall schedule all complaints to be heard by the commission and [may not act to dismiss any complaint without the approval of the commission] present any information from which a reasonable inference can be drawn that a judge has committed misconduct so that the commission may determine by majority vote of a quorum whether the executive director shall draft a written complaint in accordance with Subsection 78-8-101(2)(b).

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

(7) It is the responsibility of the chair and the executive director to ensure that the commission comply with the procedures of the commission.

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

~~[(8)]~~ (9) Upon a majority vote of the quorum, the commission may:

(a) employ ~~[a]~~ an executive 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.

(10) Members serving on January 1, 2002, shall serve from the date of their appointment until June 30, 2002. After July 1, 2002, members shall be appointed as provided in Section 78-8-102, except that those appointed shall draw by lot for terms of office of two and four years so that the terms of office of approximately half of the commission members shall expire every two years.

Section 4. Section **78-8-104** is amended 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 immediately refer the allegation and any information relevant to the potential criminal violation 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 immediately refer the allegation and any information relevant to the potential criminal violation 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 5. 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, removal, suspension, or involuntary retirement -- Certain orders made public.

(1) (a) The commission shall receive and ~~may~~ 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);

(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 ~~[good cause]~~ by a preponderance of the evidence that misconduct occurred, it shall order the 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 person or entity who appointed the judge.
- (c) Subsection (6)(b)(i) does not apply to a commission informal order of reprimand.

~~[(7) Before the implementation]~~

(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) ~~and~~, (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[-]; and

~~[(8)]~~ (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.

~~[(9)]~~ (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 [~~9~~] (10)(d); or

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

(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.

[~~10~~] (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.

[~~11~~] (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.

[~~12~~] (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.