

JUDICIAL CONDUCT COMMISSION

REVISIONS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

This act modifies provisions pertaining to the Judicial Conduct Commission. The act clarifies that a judge formally charged with a crime may be suspended without pay by the Supreme Court. The act also requires that the judge be acquitted and reinstated to judicial office to receive pay and benefits lost during the suspension. This act also provides circumstances under which the Supreme Court may suspend or remove a judge on its own motion.

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

AMENDS:

78-8-103, as renumbered and amended by Chapter 148, Laws of Utah 2000

78-8-104, as last amended by Chapter 331, Laws of Utah 2002

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

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

Section 1. Section **78-8-103** is amended to read:

78-8-103. Grounds for reprimand, censure, suspension, removal, or involuntary retirement of justice, judge, or justice court judge -- Suspension.

(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), 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 who fails to meet the minimum requirements for office, including residency.

(3) (a) The Supreme Court may, on its own motion, suspend or remove a judge from office [~~without salary or compensation if the judge is convicted of a crime punishable as a felony under state or federal law.~~] if the judge:

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

(i) develops a physical or mental disability that seriously interferes with the performance of his judicial duties as provided in the Utah Constitution, Article VIII, Section 13, Paragraph 4;

(ii) becomes unqualified to hold the judicial office as provided in the Utah Constitution, Article VIII, Sections 7 and 10, and Section 78-7-2; or

(iii) brings the judicial office into disrepute by engaging in conduct prejudicial to the administration of justice as provided in the Utah Constitution, Article VIII, Section 13, Paragraph 5.

(b) The Supreme Court shall provide notice to the judge and an opportunity to be heard.

Section 2. 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 or without 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 or without 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) (a) 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 or without pay[;] pending the outcome of the criminal proceeding.

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

(c) If the judge is not convicted of the criminal charge, and if after an investigation and final disposition of the case by the Judicial Conduct Commission, the judge is reinstated by the Supreme Court as provided in Subsection (4), then the judge shall be paid the salary or

compensation for the period of administrative leave, and all contributions withheld under Subsection (3)(b) shall be deposited in accordance with Sections 49-17-301 and 49-18-301.

(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 and if the Judicial Conduct Commission has not ordered the removal of the judge.

Section 3. 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 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 by a preponderance of the evidence that misconduct occurred, it shall order the formal 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]~~ 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[~~;~~ and].

(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); 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.

(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.