



28 (e) conduct prejudicial to the administration of justice which brings a judicial office  
29 into disrepute.

30 (2) In addition to the reasons specified in Subsection (1), the Supreme Court shall order  
31 the reprimand, censure, suspension, removal, or involuntary retirement of any justice court  
32 judge who fails to obtain and maintain certification from the Judicial Council for attendance at  
33 required judicial training courses or who fails to meet the minimum requirements for office,  
34 including residency.

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

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

40 (i) develops a physical or mental disability that seriously interferes with the  
41 performance of his judicial duties;

42 (ii) becomes unqualified to hold the judicial office; or

43 (iii) brings the judicial office into disrepute by engaging in conduct prejudicial to the  
44 administration of justice.

45 (b) The Supreme Court shall provide notice to the judge and an opportunity to rebut the  
46 allegations.

47 Section 2. Section **78-8-104** is amended to read:

48 **78-8-104. Criminal investigation of a judge -- Administrative leave.**

49 (1) (a) If the commission, during the course of its investigation into an allegation of  
50 judicial misconduct, receives information upon which a reasonable person might conclude that  
51 a misdemeanor or felony under state or federal law has been committed by an appellate court  
52 judge, a district court judge, an active senior judge, a juvenile court judge, a justice court judge,  
53 an active senior justice court judge, or a judge pro tempore, the commission shall immediately  
54 refer the allegation and any information relevant to the potential criminal violation to the chief  
55 justice of the Supreme Court.

56 (b) The chief justice of the Supreme Court may place the appellate court judge, district  
57 court judge, active senior judge, juvenile court judge, justice court judge, active senior justice  
58 court judge, or judge pro tempore on administrative leave with, without, or with reduced pay if

59 the chief justice has a reasonable basis to believe that the alleged crime occurred, that the  
60 appellate court judge, district court judge, active senior judge, juvenile court judge, justice  
61 court judge, active senior justice court judge, or judge pro tempore committed the crime, and  
62 that crime was either a felony or a misdemeanor which conduct may be prejudicial to the  
63 administration of justice or which brings a judicial office into disrepute.

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

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

74 (3) (a) If a judge is or has been criminally charged or indicted for a class A  
75 misdemeanor or any felony under state or federal law and if the Supreme Court has not already  
76 acted under Subsection (1) or (2), the appropriate member or members of the Supreme Court as  
77 provided in Subsection (1) or (2), shall place the judge on administrative leave[;] with, without,  
78 or with reduced pay[;] pending the outcome of the criminal proceeding.

79 (b) The administrator of the courts shall, for the duration of the administrative leave or  
80 suspension, withhold all employer and employee contributions required under Sections  
81 49-17-301 and 49-18-301.

82 (c) If the judge is not convicted of the criminal charge, and if after an investigation and  
83 final disposition of the case by the Judicial Conduct Commission, the judge is reinstated by the  
84 Supreme Court as provided in Subsection (4), then the judge shall be paid the salary or  
85 compensation for the period of suspension, and all contribution withheld under Subsection  
86 (3)(b) shall be deposited in accordance with Sections 49-17-301 and 49-18-301.

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

89 (a) if the prosecutor to whom the allegations are referred by the commission as

90 required under Section 78-8-107, determines no charge or indictment should be filed; or

91 (b) after final disposition of the criminal case, if the judge is not convicted of a  
92 criminal charge and if the Judicial Conduct Commission has not ordered the removal of the  
93 judge.

94 Section 3. Section **78-8-107** is amended to read:

95 **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**  
96 **misconduct or information -- Procedure for reprimand, censure, removal, suspension, or**  
97 **involuntary retirement -- Certain orders made public.**

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

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

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

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

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

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

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

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

119 (i) the person who filed the complaint;

120 (ii) the judge who is the subject of the complaint;

121 (iii) the Judicial Council for its use in the judicial recertification process;  
122 (iv) the Supreme Court for issuance of its final order as provided in Subsection (7); and  
123 (v) the person who appointed the municipal justice court judge; and  
124 (d) may, with the written consent of the judge receiving the informal order of  
125 reprimand under Subsection (2)(c), publicly disclose the commission's informal order of  
126 reprimand.

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

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

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

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

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

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

137 (i) publicly disclosed; and

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

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

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

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

144 (b) the notice of charges;

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

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

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

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

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

151 (h) a transcript of the evidence;

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

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

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

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

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

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

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

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

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

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

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

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

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

181 (10) (a) The transmission, production, or disclosure of any complaints, papers, or  
182 testimony in the course of proceedings before the commission, the masters appointed under

183 Subsection (5), or the Supreme Court may not be introduced in any civil action.

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

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

192 (i) upon order of the Supreme Court;

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

194 (iii) as provided in Subsection (10)(d); or

195 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and  
196 (2).

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

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

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

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

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**Legislative Review Note**  
**as of 1-28-03 6:44 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0119**

**Judicial Conduct Commission Revisions**

*03-Feb-03*

*1:30 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**