

Senator Mike Dmitrich proposes the following substitute bill:

1 **LEGISLATIVE REPORTING AND ACCESS**
2 **TO CERTAIN INFORMATION**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Mike Dmitrich**

6 **This act amends provisions in the Judicial Code to allow for audit by the Office of**
7 **Legislative Auditor General. This act provides an immediate effective date.**

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

9 AMENDS:

10 **78-8-107**, as last amended by Chapter 331, Laws of Utah 2002

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

12 Section 1. Section **78-8-107** is amended to read:

13 **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**
14 **misconduct or information -- Procedure for reprimand, censure, removal, suspension, or**
15 **involuntary retirement -- Certain orders made public.**

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

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

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

26 conflict.

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

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

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

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

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

37 (i) the person who filed the complaint;

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

39 (iii) the Judicial Council for its use in the judicial recertification process;

40 (iv) the Supreme Court for issuance of its final order as provided in Subsection (7); and

41 (v) the person who appointed the municipal justice court judge; and

42 (d) may, with the written consent of the judge receiving the informal order of
43 reprimand under Subsection (2)(c), publicly disclose the commission's informal order of
44 reprimand.

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

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

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

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

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

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

55 (i) publicly disclosed; and

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

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

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

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

62 (b) the notice of charges;

63 (c) all correspondence and other documents which passed between the commission and
64 the judge;

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

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

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

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

69 (h) a transcript of the evidence;

70 (i) a summary of all the complaints dismissed by the commission against the judge

71 which contained allegations or information similar in nature to the misconduct under review by
72 the Supreme Court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (i) upon order of the Supreme Court;

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

112 (iii) as provided in Subsection (10)(d); [~~or~~]

113 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and
114 (2)[~~;~~ or

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

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

119 (B) the final written and oral audit report of the Legislative Auditor General may
120 present information about the Judicial Conduct Commission as long as it contains no specific
121 information that would easily identify a judge, witness, or complainant.

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

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

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

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

131 Section 2. **Effective date.**

132 If approved by two-thirds of all the members elected to each house, this act takes effect
133 upon approval by the governor, or the day following the constitutional time limit of Utah
134 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
135 the date of veto override.