

JUDICIAL CONDUCT COMMISSION

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill amends the Judicial Conduct Commission procedures to make conforming amendments to a recent Utah Supreme Court opinion.

Highlighted Provisions:

This bill:

- ▶ prohibits the commission or its staff from initiating a complaint against a judge; and
- ▶ repeals the statutory authority of the Judicial Conduct Commission to issue private, informal orders of reprimand.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-8-101, as last amended by Chapter 331, Laws of Utah 2002

78-8-107, as last amended by Chapters 196 and 281, Laws of Utah 2003

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

Section 1. Section **78-8-101** is amended to read:

78-8-101. Definitions.

As used in this chapter:



28 (1) "Commission" means the Judicial Conduct Commission established by Utah
29 Constitution Article VIII, Section 13 and Section 78-8-102.

30 (2) (a) "Complaint" includes:

31 (i) a formal written complaint against a judge[-]; or

32 [~~(b) "Complaint" also includes the executive director of the commission's written~~
33 ~~statement of the]~~

34 (ii) an allegation based on reliable information received in any form, from any source,
35 that alleges, or from which a reasonable inference can be drawn that a judge is in violation of
36 any provision of Utah Constitution Article VIII, Section 13.

37 (b) "Complaint" does not include an allegation initiated by the commission or its staff.

38 (3) "Investigation" means an inquiry into an allegation of misconduct, including a
39 search for and examination of evidence concerning the allegations, which begins upon the
40 receipt of a complaint and is completed when either the complaint is dismissed by a majority
41 vote of the commission or when an order is sent to the Supreme Court for its review in
42 accordance with Utah Constitution Article VIII, Section 13.

43 (4) Except as more specifically provided in Subsections 78-8-104(1) and (2), "judge"
44 includes a justice of the Supreme Court, an appellate court judge, a district court judge, an
45 active senior judge, a juvenile court judge, a justice court judge, an active senior justice court
46 judge, and a judge pro tempore of any court of this state.

47 Section 2. Section **78-8-107** is amended to read:

48 **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**
49 **misconduct or information -- Procedure for reprimand, censure, suspension, removal, or**
50 **involuntary retirement -- Certain orders made public.**

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

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

57 (ii) If the local prosecuting attorney receiving the allegation of criminal misconduct of
58 a judge practices before that judge on a regular basis, or has a conflict of interest in

59 investigating the crime, the local prosecuting attorney shall refer this allegation of criminal
60 misconduct to another local or state prosecutor who would not have that same disability or
61 conflict.

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

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

65 (a) shall refer any information relating to the criminal conduct alleged and any
66 evidence which relates to the allegation to which the judge has been accused, unless plainly
67 frivolous, to the local prosecuting attorney as provided in Subsection (1)(b); ~~§ 11 [f] and [f] 11 §~~

68 (b) may order a hearing to be held concerning the reprimand, censure, suspension,
69 removal, or involuntary retirement of a judge[;] ~~§ 11 [f] . [f] [;]~~

69a ~~———— (c) SHALL, IF IT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT JUDICIAL~~
69b ~~MISCONDUCT OCCURRED:~~

69c ~~———— (i) REVIEW THE RECORD OF ALL COMPLAINTS PREVIOUSLY DISMISSED AGAINST THE JUDGE;~~

69d ~~———— (ii) REVIEW THE RECORD OF ALL PREVIOUS ORDERS OF REPRIMAND, CENSURE, OR~~
69e ~~SUSPENSION ISSUED BY THE COMMISSION AGAINST THE JUDGE; AND~~

69f ~~———— (iii) REVIEW ALL INFORMATION IN THE COMMISSION'S FILES ON ANY INFORMAL~~
69g ~~RESOLUTION, INCLUDING ANY LETTER OF ADMONITION, OR CAUTION, THAT THE COMMISSION~~
69h ~~ISSUED TO THE JUDGE PRIOR TO MAY 1, 2000; AND~~

69i ~~———— (d) MAY DISMISS RELATIVELY MINOR MISCONDUCT WITH A WARNING, OR ON CONDITIONS~~
69j ~~OF NO FURTHER MISBEHAVIOR, EVEN IF IT FINDS BY A PREPONDERANCE OF THE EVIDENCE~~
69k ~~THAT MISCONDUCT OCCURRED, UNLESS ONE OR MORE OF THE FOLLOWING CONDITIONS HAVE~~
69l ~~BEEN MET:~~

69m ~~(i) THE RESPONDENT JUDGE HAS PREVIOUSLY RECEIVED A PUBLIC REPRIMAND, CENSURE, OR~~
69n ~~SUSPENSION;~~

69o ~~(ii) THE RESPONDENT JUDGE HAS PREVIOUSLY RECEIVED ANY INFORMAL REPRIMAND FROM THE~~
69p ~~COMMISSION PRIOR TO MAY 1, 2004; OR~~

69q ~~(iii) THE MISCONDUCT UNDER CONSIDERATION HAS BEEN WIDELY REPORTED OR IS WIDELY~~
69r ~~KNOWN AMONG COURT EMPLOYEES, PARTICIPANTS IN THE JUDICIAL SYSTEM, OR THE GENERAL~~
69s ~~PUBLIC §.] 11~~

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

72 ~~[(i) the person who filed the complaint;]~~

73 ~~[(ii) the judge who is the subject of the complaint;]~~

74 ~~[(iii) the Judicial Council for its use in the judicial recertification process;]~~

75 ~~[(iv) the Supreme Court for issuance of its final order as provided in Subsection (7);~~

76 and]

77 ~~[(v) the person who appointed the municipal justice court judge; and]~~
78 ~~[(d) may, with the written consent of the judge receiving the informal order of~~
79 ~~reprimand under Subsection (2)(c), publicly disclose the commission's informal order of~~
80 ~~reprimand.]~~

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

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

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

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

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

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

91 (i) publicly disclosed; and

92 (ii) sent to the entity that appointed the judge.

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

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

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

98 (b) the notice of charges;

99 (c) all correspondence and other documents which passed between the commission and
100 the judge;

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

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

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

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

105 (h) a transcript of the evidence;

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

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

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

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

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

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

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

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

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

126 (c) After briefs have been submitted and any oral argument made, the Supreme Court
127 shall, within 90 days, issue its order implementing, rejecting, or modifying the commission's
128 order.

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

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

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

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

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

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

146 (i) upon order of the Supreme Court;

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

148 (iii) as provided in Subsection (10)(d);

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

151 (v) this information is subject to audit by the Office of Legislative Auditor General,

152 and any records released to the Office of Legislative Auditor General shall be maintained as
153 confidential, except:

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

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

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

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

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

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

Legislative Review Note
as of 1-29-04 6:31 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0161

Judicial Conduct Commission

04-Feb-04

8:24 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst