

JUDICIAL CONDUCT COMMISSION

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: Neal B. Hendrickson

LONG TITLE

General Description:

This bill allows the Judicial Conduct Commission to decline to investigate certain complaints.

Highlighted Provisions:

This bill:

▶ allows the Judicial Conduct Commission to decline to investigate any complaint that is received more than four years after the act or omission that constitutes the misconduct unless the complaint alleges criminal misconduct.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-8-107, as last amended by Laws of Utah 2006, Chapter 34

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

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

78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal



28 **misconduct or information -- Procedure for reprimand, censure, suspension, removal, or**
29 **involuntary retirement -- Certain orders made public.**

30 (1) (a) The commission shall receive and investigate any complaint against a judge,
31 except that the commission may decline to investigate any complaint that is received four years
32 after the act or omission that constitutes the alleged misconduct unless the complaint alleges
33 criminal misconduct.

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

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

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

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

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

50 (b) may order a hearing to be held concerning the reprimand, censure, suspension,
51 removal, or involuntary retirement of a judge.

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

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

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

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

58 (6) (a) After the hearing or after considering the record and report of the masters, if the

59 commission finds by a preponderance of the evidence that misconduct occurred, it shall order
60 the reprimand, censure, suspension, removal, or involuntary retirement of the judge.

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

62 (i) publicly disclosed; and

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

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

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

68 (b) the charges;

69 (c) all correspondence and other documents which passed between the commission and
70 the judge;

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

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

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

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

75 (h) a copy of each exhibit admitted into evidence;

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

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

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

84 (8) (a) Before the implementation, rejection, or modification of any commission order
85 the Supreme Court shall:

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

88 (ii) consider the number and nature of previous orders issued by the Supreme Court
89 and may increase the severity of the order based on a pattern or practice of misconduct or for

90 any other reason that the Supreme Court finds just and proper.

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

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

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

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

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

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

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

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

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

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

116 (i) upon order of the Supreme Court;

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

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

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

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

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

125 (B) the final written and oral audit report of the Legislative Auditor General may
126 present information about the commission as long as it contains no specific information that
127 would easily identify a judge, witness, or complainant.

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

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

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

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

Legislative Review Note
as of 1-21-08 10:58 AM

Office of Legislative Research and General Counsel

S.B. 191 - Judicial Conduct Commission Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
