

Senator Karen Mayne proposes the following substitute bill:

JUDICIAL CONDUCT COMMISSION AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Brian S. King

LONG TITLE

General Description:

This bill allows the Utah Supreme Court discretion in appointing judges to the Judicial Conduct Commission.

Highlighted Provisions:

This bill:

- ▶ allows the Utah Supreme Court to appoint a justice court judge to the Judicial Conduct Commission; and
- ▶ allows the Judicial Conduct Commission discretion to dismiss a complaint against a judge, even if it finds by a preponderance of the evidence that judicial misconduct occurred, if it determines that a public sanction is not warranted.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-11-103, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-11-110, as enacted by Laws of Utah 2008, Chapter 3



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

Section 1. Section **78A-11-103** is amended to read:

**78A-11-103. Judicial Conduct Commission -- Members -- Terms -- Vacancies --
Voting -- Power of chair.**

(1) The membership of the commission consists of the following 11 members:

(a) two members of the House of Representatives to be appointed by the speaker of the House of Representatives for a four-year term, not more than one of whom may be of the same political party as the speaker;

(b) two members of the Senate to be appointed by the president of the Senate for a four-year term, not more than one of whom may be of the same political party as the president;

(c) two members of, and in good standing with, the Utah State Bar, who shall be appointed by a majority of the Utah Supreme Court for a four-year term, none of whom may reside in the same judicial district;

(d) three persons not members of the Utah State Bar, who shall be appointed by the governor, with the consent of the Senate, for four-year terms, not more than two of whom may be of the same political party as the governor; and

~~[(e) one member of the Utah Court of Appeals to be selected by a majority of the Utah Supreme Court for a four-year term; and]~~

~~[(f) one judge from a trial court of record to be selected by a majority of the Utah Supreme Court for a four-year term.]~~

(e) two judges to be appointed by a majority of the Utah Supreme Court for a four-year term, neither of whom may:

(i) be a member of the Utah Supreme Court;

(ii) serve on the same level of court as the other; and

(iii) if trial judges, serve primarily in the same judicial district as the other.

(2) (a) The terms of the members shall be staggered so that approximately half of the commission expires every two years.

(b) Members of the commission may not serve longer than eight years.

(3) The commission shall establish guidelines and procedures for the disqualification of any member from consideration of any matter. A judge who is a member of the commission

57 or the Supreme Court may not participate in any proceedings involving the judge's own
58 removal or retirement.

59 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
60 be appointed by the appointing authority for that position for the unexpired term.

61 (b) If the appointing authority fails to appoint a replacement, the commissioners who
62 have been appointed may act as a commission under all the provisions of this section.

63 (5) Six members of the commission shall constitute a quorum. Any action of a
64 majority of the quorum constitutes the action of the commission.

65 (6) (a) At each commission meeting, the chair and executive director shall schedule all
66 complaints to be heard by the commission and present any information from which a
67 reasonable inference can be drawn that a judge has committed misconduct so that the
68 commission may determine by majority vote of a quorum whether the executive director shall
69 draft a written complaint in accordance with Subsection 78A-11-102(2)(b).

70 (b) The chair and executive director may not act to dismiss any complaint without a
71 majority vote of a quorum of the commission.

72 (7) It is the responsibility of the chair and the executive director to ensure that the
73 commission complies with the procedures of the commission.

74 (8) The chair shall be nonvoting except in the case of a tie vote.

75 (9) The chair shall be allowed the actual expenses of secretarial services, the expenses
76 of services for either a court reporter or a transcriber of electronic tape recordings, and other
77 necessary administrative expenses incurred in the performance of the duties of the commission.

78 (10) Upon a majority vote of the quorum, the commission may:

79 (a) employ an executive director, legal counsel, investigators, and other staff to assist
80 the commission; and

81 (b) incur other reasonable and necessary expenses within the authorized budget of the
82 commission and consistent with the duties of the commission.

83 (11) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
84 Administrative Rulemaking Act, outlining its procedures and the appointment of masters.

85 Section 2. Section **78A-11-110** is amended to read:

86 **78A-11-110. Hearing.**

87 (1) (a) A hearing may be conducted before a quorum of the commission.

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

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

91 (3) (a) After the hearing or after considering the record and report of the masters, if the
92 commission finds by a preponderance of the evidence that misconduct occurred and determines
93 that a public sanction is warranted, it shall order the reprimand, censure, suspension, removal,
94 or involuntary retirement of the judge.

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

96 (i) publicly disclosed; and

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

98 (c) In recommending any order, including stipulated orders, the commission may not
99 place, or attempt to place, any condition or limitation upon the Supreme Court's constitutional
100 power to:

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

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

103 (4) When the commission issues any order, including a stipulated order, that is sent to
104 the Supreme Court, the record shall include:

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

107 (b) the charges;

108 (c) all correspondence and other documents which passed between the commission and
109 the judge;

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

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

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

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

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

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

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

118 (j) a summary of all the orders implemented, rejected, or modified by the Supreme

119 Court against the judge; and
120 (k) all information in the commission's files on any informal resolution, including any
121 letter of admonition, comment, or caution, that the commission issued against the judge prior to
122 May 1, 2000.