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Short Title: Revise Judicial Standards Commission. (Public)

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April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE AND UPDATE THE PROCEDURES AND
RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND
TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 30 of Chapter 7A of the General Statutes reads as
rewritten:

"Article 30.

"Judicial Standards Commission.

"§ 7A-373. Purpose.

The purpose of this Article is to provide for the investigation and resolution of inquiries concerning the qualification or conduct of any judge or justice of the General Court of Justice. The procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with the provisions of this Article. Nothing in this Article shall affect the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17.

"§ 7A-374. Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

- (1) "Commission" means the North Carolina Judicial Standards Commission.
- (2) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.
- (3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.

- 1 (4) "Investigation" means the gathering of information with respect to
2 alleged misconduct or disability.
- 3 (5) "Letter of caution" means a written action of the Commission that
4 cautions a judge not to engage in certain conduct that violates the Code
5 of Judicial Conduct as adopted by the Supreme Court.
- 6 (6) "Public reprimand" means a written action of the Commission issued
7 upon a finding by the Commission that a judge has violated the Code
8 of Judicial Conduct and has engaged in conduct prejudicial to the
9 administration of justice, but that misconduct is minor and does not
10 warrant a recommendation by the Commission that the judge be
11 disciplined by the Supreme Court. A public reprimand may require
12 that the judge follow a corrective course of action.
- 13 (7) "Censure" means a finding by the Supreme Court, based upon a
14 written recommendation by the Commission, that a judge has willfully
15 engaged in misconduct prejudicial to the administration of justice that
16 brings the judicial office into disrepute, but which does not warrant the
17 suspension of the judge from the judge's judicial duties or the removal
18 of the judge from judicial office. A censure may require that the judge
19 follow a corrective course of action. Unless otherwise ordered by the
20 Supreme Court, the judge shall personally appear in the Supreme
21 Court to receive a censure.
- 22 (8) "Suspension" means a finding by the Supreme Court, based upon a
23 written recommendation by the Commission, that a judge is
24 temporarily incapacitated, or that a judge has willfully engaged in
25 misconduct prejudicial to the administration of justice that brings the
26 judicial office into disrepute, to such a degree that the judge should be
27 relieved of the duties of the judge's office for a period of time, and
28 upon conditions, including those regarding treatment and
29 compensation, as may be specified by the Supreme Court.
- 30 (9) "Removal" means a finding by the Supreme Court, based upon a
31 written recommendation by the Commission, that a judge is suffering
32 from an incapacity that is, or is likely to become, permanent, or that a
33 judge has willfully engaged in misconduct prejudicial to the
34 administration of justice that brings the judicial office into disrepute, to
35 such a degree that the judge should be relieved of all duties of the
36 judge's office and disqualified from holding further judicial office.

37 **"§ 7A-375. Judicial Standards Commission.**

38 (a) The Judicial Standards Commission shall consist of: ~~of~~ of the following
39 residents of North Carolina: one Court of Appeals judge, ~~one~~ two superior court judge,
40 judges, and ~~one~~ two district court judge, judges, each appointed by the Chief Justice of
41 the Supreme Court; ~~two~~ four members of the State Bar who have actively practiced in
42 the courts of the State for at least 10 years, elected by the State Bar Council; and ~~two~~
43 four citizens who are not judges, active or retired, nor members of the State Bar,
44 appointed by the Governor. ~~two~~ two appointed by the Governor, and two appointed by the

1 General Assembly in accordance with G.S. 120-121, one upon recommendation of the
2 President Pro Tempore of the Senate, and one upon recommendation of the Speaker of
3 the House of Representatives. The Court of Appeals judge shall act as chair of the
4 Commission.

5 (b) Terms of Commission members shall be for six years, except that, to achieve
6 overlapping of terms, one of the judges, one of the practicing members of the State Bar,
7 and one of the citizens shall be appointed initially for a term of only three ~~years.~~ years,
8 and except that the Court of Appeals judge shall serve at the pleasure of the Chief
9 Justice. Initial terms of the following members appointed to the Commission effective
10 January 1, 2006, shall be for three-year terms: one district court judge, one member of
11 the North Carolina State Bar, and one citizen. No member who has served a full
12 six-year term is eligible for reappointment. If a member ceases to have the qualifications
13 required for ~~his~~ the member's appointment, ~~he~~ that person ceases to be a member.
14 Vacancies are filled in the same manner as the original appointment, for the remainder
15 of the term. Members who are not judges are entitled to per diem and all members are
16 entitled to reimbursement for travel and subsistence expenses at the rate applicable to
17 members of State boards and commissions generally, for each day engaged in official
18 business.

19 (c) If a member of the Commission who is a judge becomes disabled, or becomes
20 a respondent before the Commission, the Chief Justice shall appoint an alternate
21 member to serve during the period of disability or disqualification. The alternate
22 member shall be from the same division of the General Court of Justice as the judge
23 whose place ~~he~~ the alternate member takes. If a member of the Commission who is not
24 a judge becomes disabled, the Governor, if ~~he~~ the Governor appointed the disabled
25 member, shall appoint, or the State Bar Council, if it elected the disabled member, shall
26 elect, an alternate member to serve during the period of disability. In a particular case, if
27 a member ~~disqualifies himself,~~ becomes disqualified, or is successfully challenged for
28 cause, ~~his~~ the member's seat for that case shall be filled by an alternate member selected
29 as provided in this subsection.

30 (d) A member may serve after expiration of ~~his~~ the member's term only to
31 participate until the conclusion of a formal proceeding begun before expiration of ~~his~~
32 the member's term. Such participation shall not prevent ~~his~~ the successor from taking
33 office, but the successor may not participate in the proceeding for which ~~his~~ the
34 predecessor's term was extended. This subsection shall apply also to any judicial
35 member whose membership on the Commission is automatically terminated by
36 retirement or resignation from judicial office, or expiration of the term of judicial office.

37 (e) Members of the Commission and its employees shall be immune from civil
38 suit for all conduct undertaken in the course of their official duties.

39 (f) The chair of the Commission may employ, if funds are appropriated for that
40 purpose, an executive director, Commission counsel, investigator, and any support staff
41 as may be necessary to assist the Commission in carrying out its duties. With the
42 approval of the Chief Justice, for specific cases, the Chair may also employ special
43 counsel or call upon the Attorney General to furnish counsel. In addition, with the
44 approval of the Chief Justice, for specific cases, the Chair or executive director may also

1 call upon the Director of the State Bureau of Investigation to furnish an investigator
2 who shall serve under the supervision of the executive director. While performing duties
3 for the Commission, the executive secretary, counsel, or investigator has authority
4 throughout the State to serve subpoenas or other process issued by the Commission in
5 the same manner and with the same effect as an officer authorized to serve process of
6 the General Court of Justice.

7 (g) The Commission may adopt, and may amend from time to time, its own rules
8 of procedure for the performance of the duties and responsibilities prescribed by this
9 Article, subject to the approval of the Supreme Court.

10 **"§ 7A-376. Grounds for censure or removal. Grounds for discipline by**
11 **Commission; censure, suspension, or removal by the Supreme Court.**

12 (a) The Commission upon a determination that any judge has engaged in conduct
13 that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme
14 Court but that is not of such a nature as would warrant a recommendation of censure,
15 suspension, or removal, may privately admonish the judge against engaging in that
16 conduct, or may issue a public reprimand to the judge.

17 (b) Upon recommendation of the Commission, the Supreme Court may ~~censure~~
18 ~~or remove~~ censure, suspend, or remove any judge for willful misconduct in office,
19 willful and persistent failure to perform his the judge's duties, habitual intemperance,
20 conviction of a crime involving moral turpitude, or conduct prejudicial to the
21 administration of justice that brings the judicial office into disrepute. ~~Upon~~
22 ~~recommendation of the Commission, the Supreme Court may remove any judge for~~
23 ~~mental or physical incapacity interfering with the performance of his duties, which is, or~~
24 ~~is likely to become, permanent. A judge who is suspended for any of the foregoing~~
25 ~~reasons shall receive no compensation during the period of that suspension. A judge~~
26 ~~who is removed for any of the foregoing reasons shall receive no retirement~~
27 ~~compensation and is disqualified from holding further judicial office.~~

28 (c) Upon recommendation of the Commission, the Supreme Court may suspend,
29 for a period of time the Supreme Court deems necessary, any judge for temporary
30 physical or mental incapacity interfering with the performance of the judge's duties, and
31 may remove any judge for physical or mental incapacity interfering with the
32 performance of the judge's duties which is, or is likely to become, permanent. A judge
33 who is suspended for temporary incapacity shall continue to receive compensation
34 during the period of the suspension. A judge removed for mental or physical incapacity
35 is entitled to retirement compensation if ~~he~~ the judge has accumulated the years of
36 creditable service required for incapacity or disability retirement under any provision of
37 State law, but he shall not sit as an emergency justice or judge. ~~A judge removed for~~
38 ~~other than mental or physical incapacity receives no retirement compensation, and is~~
39 ~~disqualified from holding further judicial office.~~

40 **"§ 7A-377. Procedures; employment of executive secretary, special counsel or**
41 **investigator.**

42 (a) Any citizen of the State may file a written complaint with the Commission
43 concerning the qualifications or conduct of any justice or judge of the General Court of
44 Justice, and thereupon the Commission shall make such investigation as it deems

1 necessary. The Commission may also make an investigation on its own motion. The
2 Commission ~~is authorized to~~ may issue process to compel the attendance of witnesses
3 and the production of evidence, to administer oaths, and to punish for ~~contempt, and to~~
4 ~~prescribe its own rules of procedure.~~ contempt. No justice or judge shall be
5 recommended for censure or removal unless he has been given a hearing affording due
6 process of law.

7 (a1) Unless otherwise waived by the justice or judge involved, all papers filed
8 with and proceedings before the Commission, including any preliminary investigation
9 ~~which~~ that the Commission may make, are confidential, and no person shall disclose
10 information obtained from Commission proceedings or papers filed with or by the
11 Commission, except as provided herein. Those papers shall not be subject to disclosure
12 under Chapter 132 of the General Statutes.

13 (a2) Information submitted to the Commission or its staff, and testimony given in
14 any proceeding before the Commission, shall be absolutely privileged, and no civil
15 action predicated upon that information or testimony may be instituted against any
16 complainant, witness, or his or her counsel.

17 (a3) If, after the preliminary investigation is completed, the Commission
18 concludes that a letter of caution is appropriate, it shall issue a letter of caution to the
19 judge in lieu of any further proceeding in the matter. The issuance of a letter of caution
20 shall be confidential in accordance with subsection (a) of this section.

21 (a4) If, after the formal investigation is completed, the Commission concludes that
22 a public reprimand is appropriate, the judge shall be served with a copy of the proposed
23 reprimand and shall be allowed 20 days within which to accept the reprimand or to
24 reject it and demand, in writing, that disciplinary proceedings be instituted in
25 accordance with subsection (a5) of this section. A public reprimand, when issued by the
26 Commission and accepted by the respondent judge, is not confidential.

27 (a5) ~~After~~ If, after the preliminary formal investigation is completed, ~~and if the~~
28 Commission concludes that ~~formal~~ disciplinary proceedings should be instituted, the
29 notice and ~~complaint~~ statement of charges filed by the Commission, along with the
30 answer and all other pleadings, are not confidential. ~~Formal~~ Disciplinary hearings
31 ordered by the Commission are not confidential, and recommendations of the
32 Commission to the Supreme Court, along with the record filed in support of such
33 recommendations are not confidential. Testimony and other evidence presented to the
34 Commission is privileged in any action for defamation. At least five members of the
35 Commission must concur in any recommendation to censure or remove any ~~justice or~~
36 ~~judge.~~ A respondent who is recommended for ~~censure or removal~~ censure, suspension,
37 or removal is entitled to a copy of the proposed record to be filed with the Supreme
38 Court, and if ~~he~~ the respondent has objections to it, to have the record settled by the
39 ~~Commission.~~ Commission's chair. ~~He~~ The respondent is also entitled to present a brief
40 and to argue ~~his~~ the respondent's case, in person and through counsel, to the Supreme
41 Court. A majority of the members of the Supreme Court voting must concur in any
42 order of ~~censure~~ censure, suspension, or removal. The Supreme Court may approve the
43 recommendation, remand for further proceedings, or reject the recommendation. A

1 justice of the Supreme Court or a member of the Commission who is a judge is
2 disqualified from acting in any case in which he is a respondent.

3 ~~(b) The chair of the Commission is authorized to employ an executive secretary~~
4 ~~to assist the Commission in carrying out its duties. For specific cases, the Commission~~
5 ~~may also employ special counsel or call upon the Attorney General to furnish counsel.~~
6 ~~For specific cases, the Commission may also employ an investigator or call upon the~~
7 ~~Director of the State Bureau of Investigation to furnish an investigator. While~~
8 ~~performing duties for the Commission such executive secretary, special counsel or~~
9 ~~investigator shall have authority throughout the State to serve subpoenas or other~~
10 ~~process issued by the Commission in the same manner and with the same effect as an~~
11 ~~officer authorized to serve process of the General Court of Justice.~~

12 (c) The Commission may issue advisory opinions to judges, in accordance with
13 rules and procedures adopted by the Commission.

14 (d) The Commission has the same power as a trial court of the General Court of
15 Justice to punish for contempt, or for refusal to obey lawful orders or process issued by
16 the Commission.

17 **"§ 7A-378. Censure or removal of justice of Supreme Court.**

18 (a) The recommendation of the Judicial Standards Commission for ~~censure~~
19 censure, suspension, or removal of any justice of the Supreme Court for any grounds
20 provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of
21 Appeals, which shall have and shall proceed under the same authority for censure or
22 removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and
23 7A-377(a) for censure or removal of any judge.

24 (b) The proceeding shall be heard by a panel of the Court of Appeals consisting
25 of the Chief Judge, who shall be the presiding judge of the panel, and six other judges,
26 the senior in service, excluding the judge who is chairman of the ~~commission.~~
27 Commission. For good cause, a judge may be excused by a majority of the panel. If the
28 Chief Judge is excused, the presiding judge shall be designated by a majority of the
29 panel. The vacancy created by an excused judge shall be filled by the judge of the court
30 who is next senior in service."

31 **SECTION 2.** This act becomes effective January 1, 2006.