

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 652
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Senate Judiciary I Committee Substitute Adopted 7/18/13

Short Title: Modify Judicial Discipline.

(Public)

Sponsors:

Referred to:

April 10, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE LAW REGARDING DISCIPLINE FOR JUDGES.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 7A-374.2 reads as rewritten:

5 "**§ 7A-374.2. Definitions.**

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

- 8 (1) "Censure" means a finding by the Supreme Court, based upon a written
9 recommendation by the Commission, that a judge has willfully engaged in
10 misconduct prejudicial to the administration of justice that brings the judicial
11 office into disrepute, but which does not warrant the suspension of the judge
12 from the judge's judicial duties or the removal of the judge from judicial
13 office. A censure may require that the judge follow a corrective course of
14 action. Unless otherwise ordered by the Supreme Court, the judge shall
15 personally appear in the Supreme Court to receive a censure.
- 16 (2) "Commission" means the North Carolina Judicial Standards Commission.
- 17 (3) "Incapacity" means any physical, mental, or emotional condition that
18 seriously interferes with the ability of a judge to perform the duties of
19 judicial office.
- 20 (4) "Investigation" means the gathering of information with respect to alleged
21 misconduct or disability.
- 22 (5) "Judge" means any justice or judge of the General Court of Justice of North
23 Carolina, including any retired justice or judge who is recalled for service as
24 an emergency judge of any division of the General Court of Justice.
- 25 (6) "Letter of caution" means a written action of the Commission that cautions a
26 judge not to engage in certain conduct that violates the Code of Judicial
27 Conduct as adopted by the Supreme Court.
- 28 (7) "Public reprimand" means a ~~written action of the Commission issued upon a~~
29 ~~finding~~ finding by the Supreme Court, based upon a written recommendation
30 by the Commission that a judge has violated the Code of Judicial Conduct
31 and has engaged in conduct prejudicial to the administration of justice, but
32 that misconduct is ~~minor and does not warrant a recommendation by the~~
33 ~~Commission that the judge be disciplined by the Supreme Court.~~ minor. A
34 public reprimand may require that the judge follow a corrective course of
35 action.



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1 (8) "Remove" or "removal" means a finding by the Supreme Court, based upon
2 a written recommendation by the Commission, that a judge should be
3 relieved of all duties of the judge's office and disqualified from holding
4 further judicial office.

5 (9) "Suspend" or "suspension" means a finding by the Supreme Court, based
6 upon a written recommendation by the Commission, that a judge should be
7 relieved of the duties of the judge's office for a period of time, and upon
8 conditions, including those regarding treatment and compensation, as may
9 be specified by the Supreme Court."

10 **SECTION 2.** G.S. 7A-376 reads as rewritten:

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

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

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

26 (c) Upon recommendation of the Commission, the Supreme Court may suspend, for a
27 period of time the Supreme Court deems necessary, any judge for temporary physical or mental
28 incapacity interfering with the performance of the judge's duties, and may remove any judge for
29 physical or mental incapacity interfering with the performance of the judge's duties which is, or
30 is likely to become, permanent. A judge who is suspended for temporary incapacity shall
31 continue to receive compensation during the period of the suspension. A judge removed for
32 mental or physical incapacity is entitled to retirement compensation if the judge has
33 accumulated the years of creditable service required for incapacity or disability retirement
34 under any provision of State law, but he shall not sit as an emergency justice or judge."

35 **SECTION 3.** G.S. 7A-377 reads as rewritten:

36 **"§ 7A-377. Procedures.**

37 (a) Any citizen of the State may file a written complaint with the Commission
38 concerning the qualifications or conduct of any justice or judge of the General Court of Justice,
39 and thereupon the Commission shall make such investigation as it deems necessary. The
40 Commission may also make an investigation on its own motion. The Commission may issue
41 process to compel the attendance of witnesses and the production of evidence, to administer
42 oaths, and to punish for contempt. No justice or judge shall be recommended for public
43 reprimand, censure, suspension, or removal unless he has been given a hearing affording due
44 process of law.

45 (a1) Unless otherwise waived by the justice or judge involved, all papers filed with and
46 proceedings before the Commission, including any investigation that the Commission may
47 make, are confidential, and no person shall disclose information obtained from Commission
48 proceedings or papers filed with or by the Commission, except as provided herein. Those
49 papers are not subject to disclosure under Chapter 132 of the General Statutes.

50 (a2) Information submitted to the Commission or its staff, and testimony given in any
51 proceeding before the Commission, shall be absolutely privileged, and no civil action

1 predicated upon that information or testimony may be instituted against any complainant,
2 witness, or his or her counsel.

3 (a3) If, after an investigation is completed, the Commission concludes that a letter of
4 caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further
5 proceeding in the matter. The issuance of a letter of caution is confidential in accordance with
6 subsection (a1) of this section.

7 ~~(a4) If, after an investigation is completed, the Commission concludes that a public
8 reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and
9 shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in
10 writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this
11 section. A public reprimand, when issued by the Commission and accepted by the respondent
12 judge, is not confidential.~~

13 (a5) If, after an investigation is completed, the Commission concludes that disciplinary
14 proceedings should be instituted, the notice and statement of charges filed by the Commission,
15 along with the answer and all other pleadings, ~~are not~~ remain confidential. Disciplinary hearings
16 ordered by the Commission are ~~not~~ confidential, and recommendations of the Commission to
17 the Supreme Court, along with the record filed in support of such recommendations are ~~not~~
18 confidential. Testimony and other evidence presented to the Commission is privileged in any
19 action for defamation. At least five members of the Commission must concur in any
20 recommendation to issue a public reprimand, censure, suspend, or remove any judge. A
21 respondent who is recommended for public reprimand, censure, suspension, or removal is
22 entitled to a copy of the proposed record to be filed with the Supreme Court, and if the
23 respondent has objections to it, to have the record settled by the Commission's chair. The
24 respondent is also entitled to present a brief and to argue the respondent's case, in person and
25 through counsel, to the Supreme Court. A majority of the members of the Supreme Court
26 voting must concur in any order of public reprimand, censure, suspension, or removal. The
27 Supreme Court may approve the recommendation, remand for further proceedings, or reject the
28 recommendation. A justice of the Supreme Court or a member of the Commission who is a
29 judge is disqualified from acting in any case in which he is a respondent.

30 (a6) Upon issuance of a public reprimand, censure, suspension, or removal by the
31 Supreme Court, the notice and statement of charges filed by the Commission along with the
32 answer and all other pleadings, and recommendations of the Commission to the Supreme Court
33 along with the record filed in support of such recommendations, are no longer confidential.

34 (b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

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

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

40 **SECTION 4.** G.S. 7A-378 is repealed.

41 **SECTION 5.** This act is effective when it becomes law.