

Amendment No. 338

Assembly Amendment to Assembly Bill No. 496

(BDR 1-1110)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

AMI/RRY



Date: 4/20/2009

A.B. No. 496—Revises provisions governing judicial discipline. (BDR 1-1110)



ASSEMBLY BILL NO. 496—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing judicial discipline. (BDR 1-1110)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to the Commission on Judicial Discipline; revising the statute of limitations for filing certain complaints with the Commission; revising provisions concerning the grounds upon which the Commission may discipline a judge; authorizing the Commission to impose additional forms of discipline upon a judge who is the subject of a complaint; revising certain provisions concerning the confidentiality of the proceedings of the Commission; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines certain terms used in certain provisions of chapter 1 of NRS which relate to the Commission on Judicial Discipline. (NRS 1.425-1.429) **Sections 14, 15-9, 16 and 17** of this bill revise certain definitions and define additional terms that are used in those provisions.

Section 13 of this bill requires the Commission to prepare annual and biennial reports concerning, among other things, the disposition of cases filed with the Commission.

Sections 21, 22, 26 and 27 of this bill authorize the Commission to dismiss a complaint with a letter of caution under certain circumstances. (NRS 1.4655, 1.4657, 1.4667, 1.467)

Section 21 of this bill provides, with exceptions, a 3-year statute of limitations for filing a complaint with the Commission concerning alleged misconduct or incapacity of a judge. **Section 21** also requires the Commission, within 18 months after the receipt of such a complaint, to either resolve the complaint or authorize the filing of a formal statement of charges relating to the complaint. (NRS 1.4655) **Section 27** of this bill requires a judge to file an answer to a formal statement of charges against the judge with the Commission within 20 days after the judge is served with the formal statement of charges. (NRS 1.467) **Section 28** of this bill generally requires a hearing on a formal statement of charges to be held. **Further, section 28 requires, if practicable, the hearing to be held** not later than 60 days after a judge files the answer with the Commission. (NRS 1.4673) **Section 28** also requires the Commission to prepare findings of fact and conclusions of law setting forth the decision of the Commission within 60 days after the conclusion of the hearing on the formal statement of charges. (NRS 1.4673)

Section 29 of this bill requires the Commission to give a judge 7 days' notice and an opportunity to respond and to hold a public hearing before the Commission suspends the judge from office. (NRS 1.4675)

Section 30 of this bill adds public admonishment and public reprimand to the existing forms of discipline the Commission is authorized to use for a judge who is the subject of a

complaint. (NRS 1.4677) **Section 32** of this bill authorizes a person who files a complaint against a judge with the Commission, the judge who is the subject of the complaint or a witness to disclose information concerning the complaint and any investigation or proceedings concerning the complaint. **Section 32** also authorizes the Commission to issue an explanatory statement, under certain circumstances, concerning a complaint filed with the Commission under certain circumstances in which the complaint is made public. (NRS 1.4683)

Section 33 of this bill revises provisions governing the documents and exhibits concerning a complaint which must be made accessible to the public.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 1 of NRS is hereby amended by adding thereto the provisions set forth as sections ~~1.5~~ 1.5 to 14, inclusive, of this act.

Sec. 1.5. *“Admonish” means to issue a written expression of disapproval of a judge for one or more violations of the Nevada Code of Judicial Conduct by the judge as described in NRS 1.4653. The expression of disapproval may include a warning to the judge to avoid similar conduct in the future.*

Sec. 2. *“Censure” means to issue a formal, written condemnation of a judge for one or more violations of the Nevada Code of Judicial Conduct by the judge as described in NRS 1.4653 that do not require ~~[suspension]~~ the removal or barring of the judge from office because there are substantial mitigating factors.*

Sec. 3. *“Complaint” means information in any form and from any source that alleges or implies judicial misconduct or incapacity.*

Sec. 4. *“Formal statement of charges” means a document ~~issued by the Commission~~ setting forth the specific acts of judicial misconduct or incapacity, including any amendment thereto.*

Sec. 5. *“Letter of caution” means a private, written communication to a judge to:*

- 1. Remind the judge of ethical responsibilities;*
- 2. Warn the judge to avoid similar conduct in the future; or*
- 3. Disapprove of conduct that may create the appearance of impropriety.*

Sec. 6. *“Removal” ~~for “remove”~~ means a decision issued by the Commission to require a judge to permanently leave his judicial office for conduct described in NRS 1.4653.*

Sec. 6.5. *“Remove” means to require a judge to permanently leave his judicial office for conduct described in NRS 1.4653.*

Sec. 7. *“Reprimand” means a severe, written reproof for one or more violations of the Nevada Code of Judicial Conduct by a judge as described in NRS 1.4677.*

Sec. 8. *“Special counsel” means the attorney designated by the Commission to:*

1. ~~Direct the investigation of a complaint, and~~ Present evidence at a hearing to suspend a judge held pursuant to NRS 1.4675;

2. File and prosecute a formal statement of charges ~~1.5~~; and

3. Perform other tasks, as directed by the Commission, pursuant to a designation authorized by NRS 1.4663.

Sec. 9. *“Suspend” means a decision issued by the Commission to require a judge to temporarily leave his office for conduct described in NRS 1.4675.*

Sec. 10. *1. Proceedings before the Commission are civil matters designed to preserve an independent and honorable judiciary.*

2. Except as otherwise provided in NRS 1.425 to 1.4695, inclusive, and sections ~~1.5~~ 1.5 to 14, inclusive, of this act or in the procedural rules adopted by the Commission, after a formal statement of charges has been filed, the Nevada Rules of Civil Procedure apply.

Sec. 11. 1. Each appointing authority shall appoint for each position for which the authority makes an appointment to the Commission an alternate member ~~who is a resident from a different county than the appointed member.~~ The Governor shall not appoint more than two alternate members of the same political party. An alternate member must not be a member of the Commission on Judicial Selection.

2. An alternate member shall serve:

(a) When the appointed member is disqualified or unable to serve; or

(b) When a vacancy exists.

Sec. 12. The Commission shall adopt rules providing for the disposition of a complaint or formal statement of charges at any stage in a disciplinary proceeding, pursuant to:

1. The consent of the judge who is the subject of the complaint; and

2. An agreement between the judge and the Commission.

Sec. 13. 1. ~~Within 3 months before the end of~~ On or before September 30 of each fiscal year, the Commission shall prepare an annual report summarizing the activities of the Commission during ~~that~~ the preceding fiscal year. The annual report must include, without limitation, information concerning the disposition of complaints and a statement of the budget and expenses of the Commission. The annual report must be made available to the public.

2. ~~Every 2 years,~~ On or before September 30 of each odd-numbered year, the Commission shall prepare a biennial report summarizing the activities of the Commission during the preceding 2 fiscal years. The biennial report must include, without limitation, information concerning the disposition of complaints and a statement of the budget and expenses of the Commission. The Commission shall file a copy of the biennial report with the Governor, the Majority Leader of the Senate, the Speaker of the Assembly, the Chief Justice of the Supreme Court of Nevada, the Chairman of the Senate Standing Committee on Judiciary, the Chairman of the Assembly Standing Committee on Judiciary and the State Bar of Nevada. The biennial report must be made available to the public.

3. The information included in the annual and biennial reports prepared pursuant to this section must comply with any applicable confidentiality requirements.

Sec. 14. 1. The Commission may extend the limitations on time set forth in NRS 1.425 to 1.4695, inclusive, and sections ~~1.5~~ 1.5 to 14, inclusive, of this act for good cause shown.

2. The limitations on time set forth in NRS 1.425 to 1.4695, inclusive, and sections ~~1.5~~ 1.5 to 14, inclusive, of this act must be computed in the same manner as in the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure and must not include:

(a) Periods of delay at the request of or attributable to a judge other than the judge who is the subject of a complaint;

(b) Short periods of delay that are the result of the period between scheduled meetings of the Commission;

(c) Periods in which the judge who is the subject of a complaint and the Executive Director of the Commission or special counsel are negotiating an agreement; or

(d) Periods when the Commission is holding a complaint in abeyance pending the disposition of a court case relating to the complaint.

3. *The Commission shall not dismiss a complaint or a formal statement of charges for failure to comply with the limitations of time set forth in NRS 1.425 to 1.4695, inclusive, and sections ~~1.5~~ 1.5 to 14, inclusive, of this act unless the Commission determines such a delay is unreasonable and the rights of the judge to a fair hearing have been violated. The fact that an investigation has been conducted more than 24 months after the date the complaint was filed with the Commission is prima facie evidence of an unreasonable delay, which may be rebutted.*

Sec. 15. NRS 1.425 is hereby amended to read as follows:

1.425 As used in NRS 1.425 to 1.4695, inclusive, *and sections ~~1.5~~ 1.5 to 14, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 1.426 ~~to 1.429, inclusive,~~, *1.427 and 1.428, and sections ~~1.5~~ 1.5 to 9, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 16. NRS 1.427 is hereby amended to read as follows:

1.427 "Incapacitated" means unable to perform the duties of ~~this~~ office because of advanced age or mental or physical disability.

Sec. 17. NRS 1.428 is hereby amended to read as follows:

1.428 "Judge" means:

1. *A justice of the Supreme Court; ~~of the State of Nevada;~~*

2. A judge of the district court;

~~2.~~ 3. A judge of the municipal court;

~~3.~~ 4. A justice of the peace; and

~~4.~~ 5. Any other officer of the Judicial Branch of this State, whether or not he is an attorney, who presides over judicial proceedings, including, but not limited to, a magistrate, court commissioner, special master or referee.

Sec. 18. NRS 1.440 is hereby amended to read as follows:

1.440 1. The Commission has exclusive jurisdiction over the *public* censure, removal, involuntary retirement and other discipline of judges which is coextensive with its jurisdiction over justices of the Supreme Court and must be exercised in the same manner and under the same rules.

2. The Supreme Court shall appoint two justices of the peace or two municipal judges to sit on the Commission for formal, public proceedings against a justice of the peace or a municipal judge, respectively. Justices of the peace and municipal judges so appointed must be designated by an order of the Supreme Court to sit for such proceedings in place of and to serve for the same terms as the regular members of the Commission appointed by the Supreme Court.

Sec. 19. NRS 1.465 is hereby amended to read as follows:

1.465 1. The following persons are absolutely immune from suit for all conduct at any time in the course of their official duties:

(a) Any member who serves on the Commission;

(b) Any person employed by the Commission;

(c) Any independent contractor of the Commission; and

(d) Any person who performs services pursuant to NRS 1.450 or 1.460 for the Commission.

2. ~~The~~ *Except as otherwise provided in NRS 1.4683, the* following persons are absolutely immune from suit unless convicted of committing perjury before the Commission pursuant to NRS 199.120 to 199.200, inclusive:

(a) A person who files a complaint with the Commission pursuant to NRS 1.4655; ~~and~~

(b) A person who gives testimony at a ~~public~~ hearing held by the Commission pursuant to NRS ~~1.467~~ 1.4673 or 1.4675 ~~1.4675~~; *and*

(c) A person who gives a statement to an investigator of the Commission during an authorized investigation.

Sec. 20. NRS 1.4653 is hereby amended to read as follows:

1.4653 1. The Commission may remove ~~{}~~ a judge, publicly censure a judge or impose other forms of discipline on a ~~{justice or}~~ judge if the Commission determines that the ~~{justice or}~~ judge:

- (a) Has committed willful misconduct;
- (b) Has willfully or persistently failed to perform the duties of his office; or
- (c) Is habitually intemperate.

2. The Commission may publicly censure a judge or impose other forms of discipline on a ~~{justice or}~~ judge if the Commission determines that the ~~{justice or}~~ judge has violated one or more of the provisions of the Nevada Code of Judicial Conduct in a manner that is not knowing or deliberate.

3. The Commission may retire a ~~{justice or}~~ judge if the Commission determines that:

(a) The advanced age of the ~~{justice or}~~ judge interferes with the proper performance of his judicial duties; or

(b) The ~~{justice or}~~ judge suffers from a mental or physical disability that prevents the proper performance of his judicial duties and is likely to be permanent in nature.

4. As used in this section:

(a) "Habitual intemperance" means the chronic, excessive use of alcohol or another substance that affects mental processes, awareness or judgment.

(b) "Willful misconduct" includes:

(1) Conviction of ~~{a felony or of a misdemeanor}~~ any crime involving moral turpitude;

(2) A knowing or deliberate violation of one or more of the provisions of the Nevada Code of Judicial Conduct; and

(3) A knowing or deliberate act or omission in the performance of judicial or administrative duties that:

(I) Involves fraud or bad faith or amounts to a public offense; and

(II) Tends to corrupt or impair the administration of justice in a judicial proceeding. ~~{; and~~

~~(4) Knowingly or deliberately swearing falsely in testimony before the Commission or in documents submitted under oath to the Commission.}~~

~ The term does not include claims of error or abuse of discretion in findings of fact, legal decisions or procedural rulings unless supported by evidence of abuse of authority, a disregard for fundamental rights, an intentional disregard of the law, a pattern of legal error or an action taken for a purpose other than the faithful discharge of judicial duty.

Sec. 21. NRS 1.4655 is hereby amended to read as follows:

1.4655 1. The Commission may begin an inquiry regarding the alleged misconduct or incapacity of a ~~{justice or}~~ judge upon the receipt of ~~{~~

~~(a) A written, sworn complaint from any person which alleges that the justice or judge has committed misconduct or is incapacitated; or~~

~~(b) Information from any source and in any format, from which the Commission may reasonably infer that the justice or judge may have committed misconduct or be incapacitated.~~

~~2. For the purposes of further inquiry and action by the Commission, information described in paragraph (b) of subsection 1 shall be deemed to be a complaint upon motion of the Commission.} a complaint.~~

2. The Commission shall not consider complaints arising from acts or omissions that occurred more than 3 years before the date of the complaint or

1 *more than 1 year after the complainant knew or in the exercise of reasonable*
2 *diligence should have known of the conduct, whichever is earlier, except that:*

3 *(a) Where there is a continuing course of conduct, the conduct will be*
4 *deemed to have been committed at the termination of the course of conduct;*

5 *(b) Where there is a pattern of recurring judicial misconduct and at least one*
6 *act occurs within the 3-year or 1-year period, as applicable, the Commission may*
7 *consider all prior acts or omissions related to that pattern; and*

8 *(c) Any period in which the judge has concealed or conspired to conceal*
9 *evidence of misconduct is not included in the computation of the time limit for*
10 *the filing of a complaint pursuant to this section.*

11 *3. Within 18 months after the receipt of a complaint pursuant to this*
12 *section, the Commission shall:*

13 *(a) Dismiss the complaint with or without a letter of caution;*

14 *(b) Attempt to resolve the complaint informally as required pursuant to*
15 *NRS 1.4665;*

16 *(c) Enter into a deferred discipline agreement pursuant to NRS 1.468;*

17 *(d) With the consent of the judge, impose discipline on the judge pursuant to*
18 *an agreement between the judge and the Commission; or*

19 *(e) Authorize the filing of a formal statement of the charges based on a*
20 *finding that there is a reasonable probability that the evidence available for*
21 *introduction at a formal hearing could clearly and convincingly establish*
22 *grounds for disciplinary action.*

23 **Sec. 22.** NRS 1.4657 is hereby amended to read as follows:

24 1.4657 1. The Commission shall, in accordance with its procedural rules,
25 examine each complaint that it receives ~~[pursuant to NRS 1.4655]~~ to determine
26 whether the complaint ~~[contains allegations which, if true, would establish grounds~~
27 ~~for discipline pursuant to NRS 1.4653.]~~ *alleges objectively verifiable evidence from*
28 *which a reasonable inference could be drawn that a judge committed misconduct*
29 *or is incapacitated.*

30 2. If the Commission determines that a complaint does not contain such
31 allegations, the Commission shall dismiss the complaint ~~[]~~ *with or without a letter*
32 *of caution. A letter of caution is not a form of discipline. The Commission may*
33 *consider a letter of caution when deciding the appropriate action to be taken on a*
34 *subsequent complaint against a judge unless the letter of caution is not relevant*
35 *to the misconduct alleged in the subsequent complaint.*

36 3. If the Commission determines that a complaint does contain such
37 allegations, the Commission shall authorize further investigation . ~~[to be conducted~~
38 ~~in accordance with NRS 1.4663.]~~

39 **Sec. 23.** NRS 1.466 is hereby amended to read as follows:

40 1.466 1. During any stage of a disciplinary proceeding, including, but not
41 limited to, an investigation ~~[to determine probable cause]~~ *pursuant to NRS 1.4663*
42 and a formal hearing, the Commission may issue a subpoena to compel the
43 attendance or testimony of a witness or the production of any relevant materials,
44 including, but not limited to, books, papers, documents, records, photographs,
45 recordings, reports and tangible objects.

46 2. If a witness refuses to attend, testify or produce materials as required by the
47 subpoena, the Commission may, in accordance with its procedural rules, hold the
48 witness in contempt and impose a reasonable penalty to enforce the subpoena.

49 3. If a witness continues to refuse to attend, testify or produce materials as
50 required by the subpoena, the Commission may report to the district court by
51 petition, setting forth that:

52 (a) Due notice has been given of the time and place of attendance or testimony
53 of the witness or the production of materials;

(b) The witness has been subpoenaed by the Commission pursuant to this section; and

(c) The witness has failed or refused to attend, testify or produce materials as required by the subpoena before the Commission, or has refused to answer questions propounded to him,

➤ and asking for an order of the court compelling the witness to attend, testify or produce materials before the Commission.

4. Upon receipt of such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced materials before the Commission. A certified copy of the order must be served upon the witness.

5. If it appears to the court that the subpoena was regularly issued by the Commission, the court shall enter an order that the witness appear before the Commission at a time and place fixed in the order and testify or produce materials, and that upon failure to obey the order the witness must be dealt with as for contempt of court.

Sec. 24. NRS 1.4663 is hereby amended to read as follows:

1.4663 1. If the Commission determines pursuant to NRS 1.4657 that a complaint ~~[contains allegations which, if true, would establish grounds for discipline pursuant to NRS 1.4653,]~~ *alleges objectively verifiable evidence from which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated,* the Commission shall assign or appoint an investigator to conduct an investigation to determine whether the allegations have merit. *The Commission may designate special counsel at any time [during an investigation of a complaint,] after a complaint is filed with the Commission pursuant to NRS 1.4655.*

2. Such an investigation must be conducted in accordance with procedural rules adopted by the Commission and may extend to any matter that is, in the determination of the Commission, reasonably related to an allegation of misconduct or incapacity contained in the complaint.

3. An investigator assigned or appointed by the Commission to conduct an investigation pursuant to this section may, for the purpose of investigation, compel by subpoena on behalf of the Commission the attendance of witnesses and the production of necessary materials as set forth in NRS 1.466.

4. At the conclusion of the investigation, the investigator shall prepare a written report of the investigation for review by the Commission.

Sec. 25. NRS 1.4665 is hereby amended to read as follows:

1.4665 1. ~~[If a]~~ *Except as otherwise provided in this section or in the procedural rules adopted by the Commission, the Commission shall use the same procedures with respect to allegations of incapacity as it uses with respect to allegations of misconduct.*

2. *The Commission shall attempt to resolve the following matters informally:*

(a) *A complaint received by the Commission which alleges that a [justice or] judge is incapacitated [; the Commission shall, after examining the complaint and conducting an investigation pursuant to NRS 1.4657 and 1.4663, attempt to resolve the matter informally.];*

(b) *A matter in which the preliminary investigation reveals that a judge may have a physical or mental disability; and*

(c) *A matter in which the judge raises a mental or physical disability as an issue before the filing of the formal statement of charges.*

1 3. *An informal resolution by the Commission pursuant to subsection 2*
2 *includes, without limitation:*

3 (a) *Voluntary retirement by the judge; and*

4 (b) *If the disability can be adequately addressed through treatment, a*
5 *deferred discipline agreement pursuant to NRS 1.468.*

6 4. In attempting to resolve ~~the~~ a matter informally, the Commission may
7 request that the ~~justice or~~ judge named in the complaint submit to medical,
8 psychiatric or psychological testing by a physician licensed to practice medicine in
9 this State who is selected by the Commission.

10 ~~2.~~ 5. If the Commission is unable to resolve the matter informally pursuant
11 to subsection ~~1.~~ 2, the Commission shall:

12 (a) Proceed as set forth in NRS 1.4667, 1.467 and 1.4673. ~~If the matter~~
13 ~~proceeds to the point at which the prosecuting attorney files a statement of formal~~
14 ~~charges pursuant to NRS 1.467 and the justice or judge named in the complaint~~
15 ~~denies all or part of those charges, the Commission shall deem such a denial to be~~
16 ~~consent on the part of the justice or judge to submit to medical, psychiatric or~~
17 ~~psychological testing by a physician licensed to practice medicine in this State who~~
18 ~~is selected by the Commission.~~

19 (b) Unless the ~~justice or~~ judge has retained counsel at his own expense,
20 appoint an attorney to represent the ~~justice or~~ judge at public expense.

21 6. *If a judge raises a mental or physical disability as an affirmative defense*
22 *or in mitigation, the judge shall be deemed to have consented to medical,*
23 *psychiatric or psychological testing and to have waived the psychologist-patient*
24 *privilege, doctor-patient privilege, marriage and family therapist-client privilege*
25 *and social worker-client privilege set forth in chapter 49 of NRS, as applicable.*
26 *The Commission shall require the judge to produce his relevant medical records*
27 *and to submit to medical, psychiatric or psychological testing by a physician*
28 *licensed to practice medicine in this State who is selected by the judge. If the*
29 *judge refuses to produce medical records or submit to an examination, the*
30 *Commission shall preclude the judge from presenting the medical records or*
31 *evidence of the results of medical examinations conducted on behalf of the judge*
32 *and may consider the refusal as evidence that the judge has an incapacity that*
33 *seriously interferes with the performance of judicial duties of the judge and is*
34 *likely to become permanent, or as evidence contradicting the claim of a disability*
35 *by the judge as an affirmative defense or mitigating factor.*

36 7. *If a judge raises a mental illness or other disability as a defense or*
37 *mitigating factor in a proceeding alleging misconduct, the judge has the burden*
38 *of proving by ~~clear and convincing~~ a preponderance of the evidence that:*

39 (a) *He has a serious mental illness or other disability;*

40 (b) *The mental illness or other disability caused the misconduct;*

41 (c) *He has undergone or is undergoing treatment for the mental illness or*
42 *other disability;*

43 (d) *The treatment has abated the cause of the misconduct; and*

44 (e) *The misconduct is not likely to recur.*

45 ~~3.~~ 8. The findings of a physician ~~appointed~~ selected by the Commission
46 pursuant to this section are not privileged communications.

47 ~~4.~~ 9. The provisions of this section do not prohibit a ~~justice or~~ judge from
48 having legal counsel and a physician of his choice present at a medical, psychiatric
49 or psychological examination conducted pursuant to this section.

50 ~~5.~~ 10. The Commission shall adopt procedural rules to carry out the
51 provisions of this section.

1 **Sec. 26.** NRS 1.4667 is hereby amended to read as follows:

2 1.4667 *1.* The Commission shall review the report ~~of an investigation~~
3 ~~conducted~~ *prepared* pursuant to NRS 1.4663 to determine whether there is
4 ~~sufficient reason to proceed~~ *a reasonable probability that the evidence available*
5 *for introduction at a formal hearing could clearly and convincingly establish*
6 *grounds for disciplinary action against a judge.*

7 2. If the Commission determines that ~~there is not sufficient reason to~~
8 ~~proceed~~ *such a reasonable probability does not exist*, the Commission shall
9 dismiss the complaint ~~with or without a letter of caution. The Commission may~~
10 *consider a letter of caution when deciding the appropriate action to be taken on a*
11 *subsequent complaint against a judge unless the caution is not relevant to the*
12 *misconduct alleged in the subsequent complaint.*

13 3. If the Commission determines that ~~it could, in all likelihood, make a~~
14 ~~determination in the affirmative pursuant to NRS 1.467,~~ *such a reasonable*
15 *probability exists*, the Commission shall require the ~~justice or~~ judge ~~named in the~~
16 ~~complaint~~ to respond to the complaint in accordance with procedural rules adopted
17 by the Commission. ~~If the justice or judge fails to respond to the complaint, the~~
18 ~~Commission shall deem such failure to be an admission that the facts alleged in the~~
19 ~~complaint.~~

20 ~~(1.) (a) Are true and~~

21 ~~(2.) (b) Establish grounds for discipline pursuant to NRS 1.4653.~~

22 **Sec. 27.** NRS 1.467 is hereby amended to read as follows:

23 1.467 1. After ~~the justice or~~ a judge ~~named in the complaint~~ responds to
24 the complaint *as required* pursuant to NRS 1.4667, ~~and after considering that~~
25 ~~response and other relevant information,~~ the Commission shall make a finding of
26 whether there is a reasonable probability that the evidence available for
27 introduction at a formal hearing could clearly and convincingly establish grounds
28 for disciplinary action against the ~~justice or~~ judge. ~~named in the complaint~~
29 ~~pursuant to NRS 1.4653.~~

30 2. If the Commission ~~makes a finding~~ *finds* that such a reasonable
31 probability does not exist, the Commission shall dismiss the complaint ~~with or~~
32 ~~without a letter of caution. The Commission may consider a letter of caution~~
33 *when deciding the appropriate action to be taken on a subsequent complaint*
34 *against a judge unless the caution is not relevant to the misconduct alleged in the*
35 *subsequent complaint.*

36 3. If the Commission ~~makes a finding~~ *finds* that such a reasonable
37 probability ~~does exist,~~ *exists, but reasonably believes that the misconduct would*
38 *be addressed more appropriately through rehabilitation, treatment, education or*
39 *minor corrective action, the Commission may enter into a deferred discipline*
40 *agreement with the judge for a definite period as described in NRS 1.468.*

41 4. The Commission shall not dismiss a complaint with a letter of caution or
42 enter into a deferred discipline agreement with a judge if:

43 (a) The misconduct of the judge involves the misappropriation of money,
44 dishonesty, deceit, fraud, misrepresentation or a crime that adversely reflects on
45 the honesty, trustworthiness or fitness of the judge;

46 (b) The misconduct of the judge resulted or will likely result in substantial
47 prejudice to a litigant or other person;

48 (c) The misconduct of the judge is part of a pattern of similar misconduct; or

49 (d) The misconduct of the judge is of the same nature as misconduct for
50 which the judge has been publicly disciplined or which was the subject of a
51 deferred discipline agreement entered into by the judge within the immediately
52 preceding 5 years.

1 ***5. If the Commission finds that such a reasonable probability exists and***
2 ***that formal proceedings are warranted,*** the Commission shall, in accordance with
3 its procedural rules ~~[-~~:

4 ~~—(a) Designate a prosecuting attorney, who must~~, ***designate special counsel to***
5 ***sign under oath and file with the Commission*** a formal statement of charges against
6 the ~~[justice or judge and file the statement with the Commission;~~

7 ~~—(b) Require that the justice or judge submit to the Commission an answer to the~~
8 ***formal statement of charges; and***

9 ~~—(c) Hold a formal, public hearing on the merits of the charges.~~

10 ~~—4.] judge.~~

11 ***6. Within 20 days after service of the formal statement of charges, the judge***
12 ***shall file an answer with the Commission under oath.*** If the ~~[justice or]~~ judge fails
13 to answer the formal statement of charges ~~[pursuant to subsection 3.]~~ ***within that***
14 ***period,*** the Commission shall deem such failure to be an admission that the charges
15 set forth in the formal statement:

16 (a) Are true; and

17 (b) Establish grounds for discipline pursuant to NRS 1.4653.

18 ***7. The Commission shall adopt rules regarding disclosure and discovery***
19 ***after the filing of a formal statement of charges.***

20 ***8. By leave of the Commission, a statement of formal charges may be***
21 ***amended at any time, before the close of the hearing, to allege additional matters***
22 ***discovered in a subsequent investigation or to conform to proof presented at the***
23 ***hearing if the judge has adequate time, as determined by the Commission, to***
24 ***prepare a defense.***

25 **Sec. 28.** NRS 1.4673 is hereby amended to read as follows:

26 1.4673 ~~[After holding a formal hearing on the merits of the charges filed~~
27 ~~pursuant to NRS 1.467, the Commission shall, in accordance with its procedural~~
28 ~~rules, dismiss the charges or discipline the justice or judge]~~

29 ***1. Unless a deferred discipline agreement has been entered into with the***
30 ***judge pursuant to NRS 1.468, a hearing on a formal statement of charges must***
31 ***be held. If practicable, the hearing must be held*** not later than 60 days after:

32 (a) ***The judge files an answer; or***

33 (b) ***The date on which the time period for filing an answer expires if the***
34 ***judge has not filed an answer and has not filed with the Commission a request***
35 ***for an extension of time before the expiration of the period for filing the answer.***

36 ***2. If formal charges are filed against a judge:***

37 (a) ***The standard of proof in any proceedings following the formal statement***
38 ***of charges is clear and convincing evidence.***

39 (b) ***The burden of proof rests on the special counsel except where otherwise***
40 ***provided by specific statute.***

41 (c) ***The rules of evidence applicable to civil proceedings apply at a hearing***
42 ***held pursuant to subsection 1.***

43 ***3. Within 60 days after the conclusion of a hearing on a formal statement of***
44 ***charges, the Commission shall prepare and adopt written findings of fact and***
45 ***conclusions of law that:***

46 (a) ***Dismiss all or part of the charges, if the Commission determines that the***
47 ***grounds for discipline have not been proven by clear and convincing evidence; or***

48 (b) ***Impose such disciplinary actions on the judge as deemed appropriate by***
49 ***the Commission [-], if the Commission determines that the grounds for discipline***
50 ***have been proven by clear and convincing evidence.***

51 **Sec. 29.** NRS 1.4675 is hereby amended to read as follows:

52 1.4675 1. The Commission shall suspend a ~~[justice or]~~ judge from the
53 exercise of office with salary:

(a) While there is pending an indictment or information charging the ~~justice or~~ judge with a crime punishable as a felony pursuant to the laws of the State of Nevada or the United States; or

(b) When the ~~justice or~~ judge has been adjudged mentally incompetent or insane.

2. The Commission may suspend a ~~justice or~~ judge from the exercise of office without salary if the ~~justice or~~ judge:

(a) Pleads guilty, guilty but mentally ill or no contest to a charge of; or

(b) Is found guilty or guilty but mentally ill of,

➤ a crime punishable as a felony pursuant to the laws of the State of Nevada or the United States. If the conviction is later reversed, the ~~justice or~~ judge must be paid his salary for the period of suspension.

3. *In addition to the grounds set forth in subsection 2, the Commission may suspend a judge from the exercise of office without salary if the Commission determines that the judge:*

(a) *Has committed serious and repeated willful misconduct;*

(b) *Has willfully or persistently failed to perform the duties of his office; or*

(c) *Is habitually intemperate,*

➤ *and the Commission determines that the circumstances surrounding such conduct, including, without limitation, any mitigating factors, merit disciplinary action more severe than censure but less severe than removal.*

4. ~~The~~ *During any stage of a disciplinary proceeding, the* Commission may suspend ~~a justice or~~ the judge from the exercise of office with salary *pending a final disposition of the complaint* if the Commission determines, ~~pending a final determination in a judicial disciplinary proceeding,~~ *by a preponderance of the evidence,* that the ~~justice or~~ judge poses a substantial threat of serious harm to the public or to the administration of justice.

~~4.5.~~ *The Commission shall give the judge 7 days' notice of its intention to suspend the judge pursuant to this section and shall give the judge an opportunity to respond. The Commission shall hold a public hearing before ordering such a suspension, unless the judge waives his right to the hearing. The decision of the Commission must be made public.*

6. A ~~justice or~~ judge suspended pursuant to this section may appeal the suspension to the Supreme Court. ~~For reconsideration of the order.~~

~~5.~~ *If a judge appeals such a suspension:*

(a) *The standard of review for such an appeal is an abuse of discretion standard; and*

(b) *The proceedings held at the Supreme Court concerning the suspension must be open to the public.*

7. *Within 60 days after a decision by the Commission to suspend a judge pursuant to this section, the Commission shall:*

(a) ~~File~~ *Have* a formal statement of charges *filed* against the judge;

(b) *Rescind the suspension; or*

(c) *Enter into a deferred discipline agreement with the judge pursuant to NRS 1.468.*

8. The Commission may suspend a ~~justice or~~ judge pursuant to this section only in accordance with its procedural rules.

Sec. 30. NRS 1.4677 is hereby amended to read as follows:

1.4677 ~~In addition to or in lieu of removal or censure, the Commission may impose other forms of discipline on a justice or judge whom the Commission determines to have committed an act or engaged in a behavior in violation of subsection 1 or 2 of NRS 1.4653, including, but not limited to, requiring the justice or judge to;~~

1 1. Pursuant to a deferred discipline agreement with the judge entered into
2 pursuant to NRS 1.468 or based on a finding of misconduct following a hearing
3 on a formal statement of charges, the Commission may take one or more of the
4 following actions:

- 5 (a) Publicly admonish, publicly reprimand or publicly censure a judge.
6 (b) ~~{Pay}~~ Impose a fine ~~{-}~~
7 ~~2. Serve a term of suspension}~~ upon the judge.
8 (c) Suspend the judge from office ~~{-}~~
9 ~~3. without pay.~~

10 (d) Require the judge to:

11 (1) Complete a probationary period pursuant to conditions deemed
12 appropriate by the Commission.

13 ~~{4.}~~ (2) Attend training or educational courses.

14 ~~{5.}~~ (3) Follow a remedial course of action.

15 ~~{6.}~~ (4) Issue a public apology.

16 ~~{7.}~~ (5) Comply with conditions or limitations on his future conduct.

17 ~~{8.}~~ (6) Seek medical, psychiatric or psychological care or counseling and
18 direct the provider of health care or counselor to report to the Commission
19 regarding the condition or progress of the ~~{justice-or}~~ judge.

20 ~~{9. Agree not to seek}~~

21 (e) Bar the judge from serving in a judicial office in the future.

22 ~~{10. Perform any combination of the actions set forth in this section.}~~

23 (f) Impose any other reasonable disciplinary action or combination of
24 disciplinary actions that the Commission determines will curtail or remedy the
25 misconduct of the judge.

26 2. The Commission may publicly admonish a judge pursuant to subsection
27 1 if the Commission determines that the judge has violated one or more of the
28 provisions of the Nevada Code of Judicial Conduct in a manner that is not
29 knowing or deliberate and for which there are no aggravating factors.

30 3. The Commission may publicly reprimand a judge pursuant to subsection
31 1 if the Commission determines that the judge has violated one or more of the
32 provisions of the Nevada Code of Judicial Conduct in a manner that is:

- 33 (a) Not knowing or deliberate but for which there are aggravating factors; or
34 (b) Knowing or deliberate but for which there are mitigating factors.

35 Sec. 31. NRS 1.468 is hereby amended to read as follows:

36 1.468 1. Except as otherwise provided in subsections 2 and 3, if the
37 Commission reasonably believes that a ~~{justice-or}~~ judge has committed an act or
38 engaged in a behavior that would be addressed most appropriately through
39 rehabilitation, treatment, education or minor corrective action, the Commission may
40 enter into an agreement with the ~~{justice-or}~~ judge to defer formal disciplinary
41 proceedings and require the ~~{justice-or}~~ judge to undergo the rehabilitation,
42 treatment, education or minor corrective action.

43 2. The Commission may not enter into an agreement with a ~~{justice-or}~~ judge
44 to defer formal disciplinary proceedings if the Commission has determined,
45 pursuant to NRS 1.467, that there is a reasonable probability that the evidence
46 available for introduction at a formal hearing could clearly and convincingly
47 establish grounds for disciplinary action against the ~~{justice-or}~~ judge pursuant to
48 NRS 1.4653.

49 3. The Commission may enter into an agreement with a ~~{justice-or}~~ judge to
50 defer formal disciplinary proceedings only in response to misconduct that is minor
51 in nature.

1 4. A deferred discipline agreement entered into pursuant to this section
2 must be in writing and must specify the conduct that resulted in the agreement. A
3 judge who enters into such an agreement must agree:

4 (a) To the specified rehabilitation, treatment, education or minor corrective
5 action;

6 (b) To waive his right to a hearing before the Commission; and

7 (c) That the agreement will not be protected by confidentiality for the
8 purpose of any subsequent disciplinary proceedings against the judge,

9 and the agreement must indicate that the judge agreed to the terms set forth in
10 paragraphs (a), (b) and (c). Such an agreement must expressly authorize the
11 Commission to revoke the agreement and proceed with any other disposition of
12 the complaint or formal statement of charges authorized by NRS 1.467 if the
13 Commission finds that the judge has failed to comply with a condition of the
14 agreement.

15 5. The Executive Director of the Commission shall monitor the compliance
16 of the judge with the agreement. The Commission may require the judge to
17 document his compliance with the agreement. The Commission shall give the
18 judge written notice of any alleged failure to comply with any condition of the
19 agreement and shall allow the judge not less than 15 days to respond.

20 6. If the judge complies in a satisfactory manner with the conditions
21 imposed in the agreement, the Commission may dismiss the complaint or take
22 any other appropriate action.

23 Sec. 32. NRS 1.4683 is hereby amended to read as follows:

24 1.4683 1. Except as otherwise provided in this section and NRS ~~1.4693~~
25 1.4675 and 239.0115, all proceedings of the Commission must remain confidential
26 until the Commission makes a determination pursuant to NRS 1.467 and the
27 ~~{prosecuting attorney}~~ special counsel files a formal statement of charges.

28 2. Except as otherwise provided in this section, before the filing of a formal
29 statement of charges, a present or former member of the Commission, a present
30 or former member of the staff of the Commission or a present or former
31 independent contractor retained by the Commission shall not disclose
32 information contained in a complaint or any other information relating to the
33 allegations of misconduct or incapacity. Such persons:

34 (a) May disclose such information to persons directly involved in the matter
35 to the extent necessary for a proper investigation and disposition of the
36 complaint; and

37 (b) Shall conduct themselves in a manner that maintains the confidentiality
38 of the disciplinary proceeding.

39 3. Nothing in this section prohibits a person who files a complaint with the
40 Commission pursuant to NRS 1.4655, a judge against whom such a complaint is
41 made or a witness from disclosing at any time the existence or substance of a
42 complaint, investigation or proceeding. The immunity provided by NRS 1.465
43 does not apply to such a disclosure.

44 4. The confidentiality required pursuant to subsection 1 also applies to all
45 information and materials, written or oral, received or developed by the
46 Commission, ~~for~~ its staff or any independent contractors retained by the
47 Commission in the course of its work and relating to the alleged misconduct or
48 incapacity of a judge.

49 ~~3.~~ 5. The Commission shall disclose:

50 (a) The report of a proceeding before the Commission; and

51 (b) All testimony given and all materials filed in connection with such a
52 proceeding,

1 ↪ if a witness is prosecuted for perjury committed during the course of that
2 proceeding.

3 ~~[4. If the Commission determines at any stage in a disciplinary proceeding~~
4 ~~that there is an insufficient factual or legal basis to proceed, the Commission shall~~
5 ~~dismiss the complaint and may, at the request of the justice or judge named in the~~
6 ~~complaint, publicly issue an explanatory statement.~~

7 ~~5. The Commission may issue press releases and other public statements to:~~

8 ~~— (a) Explain the nature of its jurisdiction;~~

9 ~~— (b) Explain the procedure for filing a complaint;~~

10 ~~— (c) Explain limitations upon its powers and authority; and~~

11 ~~— (d) Report on the conduct of its affairs.~~

12 ~~↪ Such releases and statements must not, without the consent of the justice or~~
13 ~~judge concerned, disclose by name, position, address or other information the~~
14 ~~identity of a justice or judge or other person involved in a proceeding then pending~~
15 ~~before the Commission or that has been resolved without an order of censure,~~
16 ~~removal or retirement, unless formal charges have been filed after a determination~~
17 ~~pursuant to NRS 1.467.]~~

18 6. *Notwithstanding the provisions of this section to the contrary, at any*
19 *stage in a disciplinary proceeding, if the judge, a third person or the person who*
20 *filed a complaint with the Commission pursuant to NRS 1.4655 has made the*
21 *name of the judge against whom such a complaint is made public, the*
22 *Commission may, at the request of the judge or on its own accord, issue an*
23 *explanatory statement to maintain confidence in the judicial system and the*
24 *Commission. In such a statement, the Commission may:*

25 (i) *Confirm or deny that a complaint has been filed;*

26 (ii) *Confirm or deny that the Commission is conducting an investigation;*

27 (iii) *Confirm that the Commission has dismissed a complaint with or without*
28 *a letter of caution; and*

29 (iv) *Confirm that the Commission has entered into a deferred discipline*
30 *agreement with the judge.*

31 7. *In addition to the information authorized pursuant to subsection 6, a*
32 *statement issued by the Commission pursuant to subsection 6 may correct any*
33 *public misinformation concerning the disciplinary proceeding, clarify the*
34 *procedures of the Commission relating to the disciplinary proceeding and explain*
35 *that the judge has a right to a fair investigation and, if applicable, a fair hearing*
36 *without prejudice. The Commission shall submit such a statement to the judge*
37 *concerned for comments before the Commission releases the statement. The*
38 *Commission is not required to incorporate any comments made by the judge in*
39 *the statement and may release the statement as originally drafted.*

40 8. The Commission may, without disclosing the name of or any details that
41 may identify the ~~[justice or]~~ judge involved, disclose the existence of a proceeding
42 before it to the State Board of Examiners and the Interim Finance Committee to
43 obtain additional money for its operation from the Contingency Fund established
44 pursuant to NRS 353.266.

45 ~~[7.]~~ 9. No record of any medical examination, psychiatric evaluation or other
46 comparable professional record made for use in an informal resolution pursuant to
47 subsection ~~[H]~~ 4 of NRS 1.4665 may be made public at any time without the
48 consent of the ~~[justice or]~~ judge concerned.

49 10. *Notwithstanding the provisions of this section to the contrary, at any*
50 *stage in a disciplinary proceeding, the Commission may release confidential*
51 *information:*

(a) To the appropriate law enforcement or prosecuting authorities if the Commission determines that it has reliable information which reveals possible criminal conduct by a judge, former judge or any other person;

(b) Upon request to the Board of Governors of the State Bar of Nevada or other appropriate disciplinary authorities of the State Bar of Nevada if the Commission determines that it has reliable information that reveals a possible violation of the Rules of Professional Conduct by a judge, former judge or any other attorney; or

(c) Pursuant to an order issued by a court of record of competent jurisdiction in this State or a federal court of record of competent jurisdiction.

11. Notwithstanding the provisions of this section to the contrary, at any stage in a disciplinary proceeding, if a judge or former judge signs a waiver, the Commission may release confidential information concerning any complaints filed with the Commission pursuant to NRS 1.4655 that are pending or are closed and did not result in a dismissal to:

(a) An agency authorized to investigate the qualifications of persons for admission to practice law;

(b) An appointing or nominating authority or a state or federal agency lawfully conducting investigations relating to the selection or appointment of judges; or

(c) An agency conducting investigations relating to employment with a governmental agency or other employment.

12. If the Commission discloses information concerning a pending complaint to an agency or authority pursuant to subsection 11, the Commission shall subsequently disclose the disposition of the complaint to the agency or authority. The Commission shall send a copy of all information disclosed pursuant to subsection 11 to the judge concerned at the same time the Commission sends the information to the agency or authority.

Sec. 33. NRS 1.4687 is hereby amended to read as follows:

1.4687 ~~Upon~~ 1. Except as otherwise provided in subsection 2:

(a) Upon the filing of a formal statement of charges with the Commission by the ~~prosecuting attorney~~ special counsel, the statement and other documents later formally filed with the Commission must be made accessible to the public, and hearings must be open.

(b) If a formal statement of charges has not been filed with the Commission and the Commission holds a hearing to suspend a judge pursuant to NRS 1.4675, any transcript of the hearing and any documents offered as evidence at the hearing must be made accessible to the public.

2. Regardless of whether any formal statement of charges has been filed with the Commission, medical records and any other documents or exhibits offered as evidence which are privileged pursuant to chapter 49 of NRS must not be made accessible to the public.

3. The Commission's deliberative sessions must remain private.

4. The filing of ~~the~~ a formal statement of charges does not justify the Commission, its counsel, ~~for~~ staff or independent contractors retained by the Commission in making public any correspondence, notes, work papers, interview reports or other evidentiary matter, except at the formal hearing or with explicit consent of the ~~justice or~~ judge named in the complaint.

Sec. 34. NRS 1.429, 1.4685 and 1.4693 are hereby repealed.

Sec. 35. 1. The amendatory provisions of this act apply only to:

(a) A complaint filed with the Commission on Judicial Discipline on or after January 1, 2010; and

1 (b) Any formal statement of charges filed with the Commission on or after
2 January 1, 2010, as a result of a complaint described in paragraph (a).

3 2. As used in this section:

4 (a) "Complaint" has the meaning ascribed to it in section 3 of this act.

5 (b) "Formal statement of charges" has the meaning ascribed to it in
6 section 4 of this act.

7 Sec. 36. This act becomes effective on January 1, 2010.

TEXT OF REPEALED SECTIONS

1.429 "Justice" defined. "Justice" means a justice of the Supreme Court of the State of Nevada.

1.4685 Breach of confidentiality punishable as contempt. Except as otherwise provided in NRS 1.4693, any person who breaches the confidentiality of disciplinary proceedings of the Commission is punishable for contempt.

1.4693 Authorized disclosures by person who files complaint and person who gives testimony. Notwithstanding the provisions of NRS 1.4683 to 1.469, inclusive:

1. A person who files a complaint with the Commission may:

(a) At any time, reveal to a third party the alleged conduct of a justice or judge underlying the complaint that he filed with the Commission or the substance of testimony that he gave before the Commission.

(b) After the Commission makes a determination pursuant to NRS 1.467, regardless of whether the determination results in the filing of formal charges, reveal to a third party the fact that he filed a complaint with the Commission.

2. A person who gives testimony before the Commission may:

(a) At any time, reveal to a third party the substance of testimony that he gave before the Commission.

(b) After the Commission makes a determination pursuant to NRS 1.467, regardless of whether the determination results in the filing of formal charges, reveal to a third party the fact that he gave testimony before the Commission.