

Amendment No. 9

Assembly Amendment to Assembly Bill No. 68	(BDR 1-494)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

MNM/BJF



Date: 4/18/2015

A.B. No. 68—Revises provisions relating to the Commission on Judicial Discipline. (BDR 1-494)



ASSEMBLY BILL NO. 68—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the Commission on Judicial Discipline. (BDR 1-494)

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; ~~providing that no court in this State other than the Supreme Court may exercise jurisdiction over a~~ requiring a determination or finding by the Commission to be recorded in the minutes of the proceedings of the Commission in certain circumstances; revising the definition of the term “judge” for purposes of the jurisdiction of the Commission; requiring any complaint or action filed in connection with any proceeding of the Commission ~~authorizing the Commission to collect attorney’s fees and costs from a person who files such a complaint or action in a court lacking jurisdiction; revising provisions governing the examination of complaints received by the Commission;~~ to be filed in the Supreme Court; revising provisions concerning the appointment of justices of the peace and municipal judges to sit on the Commission in certain circumstances; requiring appointing authorities to appoint one or more alternate members to serve on the Commission; revising the information the Commission is required to disclose if a witness before the Commission is prosecuted for perjury; revising provisions relating to the confidentiality of deliberative sessions and proceedings of the Commission; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, the Commission on Judicial Discipline has exclusive jurisdiction over the public censure, removal, involuntary retirement and other discipline of judges. (NRS 1.440) Section 2.5 of this bill revises the definition of the term “judge” to include a person who is a former justice, judge, justice of the peace or other officer of the Judicial Branch who presides over judicial proceedings if the conduct at issue occurred while the person was serving in any such position. Thus, under section 2.5, the Commission has jurisdiction over a former justice, judge, justice of the peace or other judicial officer for

conduct that occurred while the person was serving in any such position. Section 3 of this bill: (1) ~~provides~~ requires that ~~no court in this State other than the Supreme Court may exercise jurisdiction over~~ any complaint or action filed in connection with any proceeding of the Commission ~~is~~ be filed in the Supreme Court; (2) ~~authorizes the Commission to require a person who files such a complaint or action in a court that lacks jurisdiction to pay the attorney's fees and costs incurred by the Commission in connection with the complaint or action; and (3) requires that any such attorney's fees and costs collected by the Commission be deposited in the State General Fund.~~

~~Existing law requires the Commission to examine each complaint it receives to determine whether the complaint alleges objectively verifiable evidence from which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated. (NRS 1.4657) Section 4 of this bill requires the Commission or its staff to examine each complaint the Commission receives and, based on that examination, the Commission shall then make such a determination.~~ provides that any such complaint or action filed in a court other than the Supreme Court will be presumed to be frivolous and intended solely for the purposes of delay; and (3) requires the Supreme Court to appoint two justices of the peace and two municipal judges to sit on the Commission for formal, public proceedings against a justice of the peace or a municipal judge, respectively. Section 3.5 of this bill requires each appointing authority to appoint, for each position for which the authority makes an appointment to the Commission, one or more alternate members.

Existing law requires that all proceedings of the Commission remain confidential until the Commission makes a determination that a reasonable probability of grounds for disciplinary action against a judge exists and the special counsel files a formal statement of charges. (NRS 1.4683) Section 5 of this bill instead requires that the existence of a proceeding of the Commission remain confidential during such time. Section 5 also revises the information that the Commission is required to disclose if a witness is prosecuted for perjury committed during the course of a proceeding before the Commission.

Existing law also requires that all deliberative sessions of the Commission remain private. (NRS 1.4687) Sections 6 and 7 of this bill require that any minutes of such sessions remain confidential.

Section 1 of this bill provides that , unless otherwise expressly provided by law, a determination or finding by the Commission is not required to be in writing unless otherwise expressly provided by law, recorded in the minutes of the proceedings of the Commission if the determination or finding is made before: (1) the filing of a formal statement of charges against a judge; or (2) the Commission decides to suspend a judge.

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 a new section to read as follows:

Except as otherwise expressly provided in this section and NRS 1.425 to 1.4695, inclusive, or any other applicable provision of law, a determination or finding by the Commission ~~is not required to be in writing,~~ must be recorded in the minutes of the proceedings of the Commission if the determination or finding is made before:

1. The filing of a formal statement of charges against a judge pursuant to NRS 1.467; or

2. The Commission suspends a judge pursuant to NRS 1.4675.

Sec. 2. NRS 1.425 is hereby amended to read as follows:

1.425 As used in NRS 1.425 to 1.4695, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 1.4253 to 1.4296, inclusive, have the meanings ascribed to them in those sections.

Sec. 2.5. NRS 1.428 is hereby amended to read as follows:

1.428 "Judge" means:

1. A justice of the Supreme Court;
2. A judge of the Court of Appeals;
3. A judge of the district court;
4. A judge of the municipal court;
5. A justice of the peace; ~~and~~
6. Any other officer of the Judicial Branch of this State, whether or not the officer is an attorney, who presides over judicial proceedings, including, but not limited to, a magistrate, court commissioner, special master or referee. ~~;~~ and
7. Any person who formerly served in any of the positions described in subsections 1 to 6, inclusive, if the conduct at issue for purposes of NRS 1.425 to 1.4695, inclusive, occurred while the person was serving in such a position.

Sec. 3. 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. No court in this State other than the Supreme Court may exercise jurisdiction over a~~ Any complaint or action, including, without limitation, an interlocutory action or appeal, filed in connection with any proceeding of the Commission ~~;~~ must be filed in the Supreme Court. Any such complaint or action filed in a court other than the Supreme Court shall be ~~deemed~~ presumed to be frivolous and intended solely for the purposes of delay. ~~The Commission may require a person who files such a complaint or action in a court other than the Supreme Court to pay the attorney's fees and costs incurred by the Commission in connection with the complaint or action. Any such attorney's fees and costs collected by the Commission must be deposited in the State General Fund.~~

3. The Supreme Court shall appoint two justices of the peace ~~for~~ and 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. 3.5. NRS 1.445 is hereby amended to read as follows:

1.445 1. Each appointing authority shall appoint for each position for which the authority makes an appointment to the Commission ~~an~~ one or more alternate ~~member.~~ members. 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. 4. ~~NRS 1.4657 is hereby amended to read as follows:~~

~~1.4657 1. The Commission or its staff shall, in accordance with [its] the procedural rules [.] of the Commission, examine each complaint that [it] the Commission receives [to] and, based on that examination, the Commission shall determine whether the complaint alleges objectively verifiable evidence from which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated.~~

~~2. If the Commission determines that a complaint does not contain such allegations, the Commission shall dismiss the complaint with or without a letter of caution. A letter of caution is not a form of discipline. The Commission may consider a letter of caution when deciding the appropriate action to be taken on a~~

1 subsequent complaint against a judge unless the letter of caution is not relevant to
2 the misconduct alleged in the subsequent complaint.

3 ~~2. If the Commission determines that a complaint does contain such~~
4 ~~allegations, the Commission shall authorize further investigation.] (Deleted by~~
5 ~~amendment.)~~

6 **Sec. 5.** NRS 1.4683 is hereby amended to read as follows:

7 1.4683 1. Except as otherwise provided in this section and NRS 1.4675 and
8 239.0115, ~~all proceedings~~ **the existence of a proceeding** of the Commission must
9 remain confidential until the Commission makes a determination pursuant to NRS
10 1.467 and the special counsel files a formal statement of charges.

11 2. Except as otherwise provided in this section, before the filing of a formal
12 statement of charges, a present or former member of the Commission, a present or
13 former member of the staff of the Commission or a present or former independent
14 contractor retained by the Commission shall not disclose information contained in a
15 complaint or any other information relating to the allegations of misconduct or
16 incapacity. Such persons:

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

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

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

26 4. The confidentiality required pursuant to subsection 1 also applies to all
27 information and materials, written or oral, received or developed by the
28 Commission, its staff or any independent contractors retained by the Commission in
29 the course of its work and relating to the alleged misconduct or incapacity of a
30 judge.

31 5. The Commission shall disclose ~~+~~

32 ~~— (a) The report of a proceeding before the Commission; and~~

33 ~~— (b) All~~ **all** testimony given and all materials filed in connection with ~~such~~ a
34 proceeding ~~+~~

35 ~~→~~ **before the Commission** if a witness is prosecuted for perjury committed during
36 the course of that proceeding.

37 6. Notwithstanding the provisions of this section to the contrary, at any stage
38 in a disciplinary proceeding, if the judge, a third person or the person who filed a
39 complaint with the Commission pursuant to NRS 1.4655 has made the name of the
40 judge against whom such a complaint is made public, the Commission may, at the
41 request of the judge or on its own accord, issue an explanatory statement to
42 maintain confidence in the judicial system and the Commission. In such a
43 statement, the Commission may:

44 (a) Confirm or deny that a complaint has been filed;

45 (b) Confirm or deny that the Commission is conducting an investigation;

46 (c) Confirm that the Commission has dismissed a complaint with or without a
47 letter of caution; and

48 (d) Confirm that the Commission has entered into a deferred discipline
49 agreement with the judge.

50 7. In addition to the information authorized pursuant to subsection 6, a
51 statement issued by the Commission pursuant to subsection 6 may correct any
52 public misinformation concerning the disciplinary proceeding, clarify the
53 procedures of the Commission relating to the disciplinary proceeding and explain

1 that the judge has a right to a fair investigation and, if applicable, a fair hearing
2 without prejudgment. The Commission shall submit such a statement to the judge
3 concerned for comments before the Commission releases the statement. The
4 Commission is not required to incorporate any comments made by the judge in the
5 statement and may release the statement as originally drafted.

6 8. The Commission may, without disclosing the name of or any details that
7 may identify the judge involved, disclose the existence of a proceeding before it to
8 the State Board of Examiners and the Interim Finance Committee to obtain
9 additional money for its operation from the Contingency Account established
10 pursuant to NRS 353.266.

11 9. No record of any medical examination, psychiatric evaluation or other
12 comparable professional record made for use in an informal resolution pursuant to
13 subsection 4 of NRS 1.4665 may be made public at any time without the consent of
14 the judge concerned.

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

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

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

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

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

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

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

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

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

44 **Sec. 6.** NRS 1.4687 is hereby amended to read as follows:

45 1.4687 1. Except as otherwise provided in subsection 2:

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

49 (b) If a formal statement of charges has not been filed with the Commission
50 and the Commission holds a hearing to suspend a judge pursuant to NRS 1.4675,
51 any transcript of the hearing and any documents offered as evidence at the hearing
52 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 **and any minutes of such sessions must remain confidential.**

4. The filing of a formal statement of charges does not justify the Commission, its counsel, 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 judge named in the complaint.

Sec. 7. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, **1.4687**, 1A.110, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3926, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.583, 584.655, 598.0964, 598.0979, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745, 640C.760,

640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Sec. 8. This act becomes effective on July 1, 2015.