

Amendment No. 17

Assembly Amendment to Assembly Bill No. 28	(BDR 1-395)
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) 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.

VG/NCA



Date: 4/4/2017

A.B. No. 28—Revises provisions relating to the Commission on Judicial Discipline. (BDR 1-395)



ASSEMBLY BILL NO. 28—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the Commission on Judicial Discipline. (BDR 1-395)

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; authorizing the Commission to order a justice of the peace or municipal judge to forfeit his or her office for failure to attend certain required instruction; establishing procedures for the Commission to order such a forfeiture of office; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Commission on Judicial Discipline to discipline a judge under certain circumstances. (NRS 1.4653) Existing law also requires a newly elected or appointed justice of the peace or municipal judge to attend certain mandatory instruction unless he or she secures a written order excusing his or her attendance from a judge of the district court of the county where the justice or the judge serves and files this order with the Court Administrator. If a newly elected or appointed justice of the peace or municipal judge fails to attend the required instruction or fails to secure and properly file a written order excusing his or her attendance, he or she is required to forfeit his or her office. (NRS 4.036, 5.026)

Section 4 of this bill authorizes the Commission to order a justice of the peace or municipal judge to forfeit his or her office if he or she fails to attend the required instruction ~~+~~ ***without a reasonable excuse.*** **Section 1** of this bill requires the Commission to give a justice of the peace or a municipal judge ~~+~~ ***30*** days' notice and an opportunity to respond and to hold a public hearing before the Commission orders the justice of the peace or municipal judge to forfeit his or her office.

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:

1. If the Commission reasonably believes that a justice of the peace or municipal judge failed to attend the instruction required pursuant to NRS 4.036

1 or 5.026, as applicable, without a reasonable excuse, the Commission shall give
2 the justice of the peace or the municipal judge:

3 (a) ~~Seven~~ Thirty days' notice of its intention to order the justice of the
4 peace or municipal judge to forfeit his or her office pursuant to this section; and

5 (b) An opportunity to respond.

6 2. The Commission shall hold a public hearing before ordering the justice
7 of the peace or municipal judge to forfeit his or her office, unless the justice of
8 the peace or municipal judge waives the right to the hearing. The decision of the
9 Commission must be made public.

10 3. A justice of the peace or municipal judge ordered to forfeit his or her
11 office pursuant to this section may appeal the order to the appellate court of
12 competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant
13 to Section 4 of Article 6 of the Nevada Constitution. If a justice of the peace or a
14 municipal judge appeals such an order to forfeit his or her office:

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

17 (b) The proceedings held at the appellate court of competent jurisdiction
18 pursuant to the rules fixed by the Supreme Court concerning the order to forfeit
19 office must be open to the public.

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

21 1.425 As used in NRS 1.425 to 1.4695, inclusive, and section 1 of this act,
22 unless the context otherwise requires, the words and terms defined in NRS 1.4253
23 to 1.4296, inclusive, have the meanings ascribed to them in those sections.

24 Sec. 3. NRS 1.465 is hereby amended to read as follows:

25 1.465 1. The following persons are absolutely immune from suit for all
26 conduct at any time in the course of their official duties:

27 (a) Any member who serves on the Commission;

28 (b) Any person employed by the Commission;

29 (c) Any independent contractor of the Commission; and

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

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

35 (a) A person who files a complaint with the Commission pursuant to NRS
36 1.4655;

37 (b) A person who gives testimony at a hearing held by the Commission
38 pursuant to NRS 1.4673 or 1.4675 ~~or~~ or section 1 of this act; and

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

41 Sec. 4. NRS 1.4653 is hereby amended to read as follows:

42 1.4653 1. The Commission may remove a judge, publicly censure a judge or
43 impose other forms of discipline on a judge if the Commission determines that the
44 judge:

45 (a) Has committed willful misconduct;

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

47 (c) Is habitually intemperate.

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

52 3. The Commission may retire a judge if the Commission determines that:

(a) The advanced age of the judge interferes with the proper performance of judicial duties; or

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

4. *The Commission may order a justice of the peace or a municipal judge to forfeit his or her office if he or she fails to attend the instruction required pursuant to NRS 4.036 or 5.026, as applicable ~~to~~, unless the Commission finds that there was a reasonable excuse for the failure to attend the instruction.*

5. As used in this section:

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

(b) "Willful misconduct" includes:

(1) Conviction of 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.

↪ 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. 5. NRS 1.4656 is hereby amended to read as follows:

1.4656 Except as otherwise expressly provided in NRS 1.425 to 1.4695, inclusive, *and section 1 of this act* or any other applicable provision of law, a determination or finding by the Commission 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; ~~for~~

2. The Commission suspends a judge pursuant to NRS 1.4675 ~~to~~; or

3. *The Commission orders a justice of the peace or municipal judge to forfeit his or her office pursuant to section 1 of this act.*

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

1.4687 1. Except as otherwise provided in subsection 2:

(a) Upon the filing of a formal statement of charges with the Commission by the 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.

(c) If the Commission holds a hearing to order a justice of the peace or municipal judge to forfeit his or her office pursuant to section 1 of this act, 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 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. 6.3. NRS 4.036 is hereby amended to read as follows:

4.036 1. Each justice of the peace who is first elected or appointed to office after July 1, 1971, shall attend the instruction provided pursuant to NRS 4.035, on the first occasion when such instruction is offered after the election or appointment of the justice of the peace, unless excused by written order of a judge of the district court in and for his or her county, which shall be filed with the Court Administrator. Such order is final for all purposes.

2. If a justice of the peace fails to attend such instruction without securing a written order pursuant to subsection 1, the justice of the peace forfeits his or her office **++ unless the Commission on Judicial Discipline finds pursuant to section 1 of this act that there was a reasonable excuse for the failure to attend such instruction.**

Sec. 6.7. NRS 5.026 is hereby amended to read as follows:

5.026 1. Each municipal judge who is first elected or appointed to office after July 1, 1971, shall attend the instruction provided pursuant to NRS 5.025, on the first occasion when such instruction is offered after the election or appointment of the municipal judge, unless excused by written order of a judge of the district court in and for the county where the city is situated, which must be filed with the Court Administrator. Such an order is final for all purposes.

2. If a municipal judge fails to attend such instruction without securing a written order pursuant to subsection 1, the municipal judge forfeits his or her office **++ unless the Commission on Judicial Discipline finds pursuant to section 1 of this act that there was a reasonable excuse for the failure to attend such instruction.**

Sec. 7. This act becomes effective upon passage and approval.