

ASSEMBLY BILL NO. 20—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 15, 2018

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing 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; requiring the investigative and prosecutorial function of the Commission to be separate from the adjudicative function 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 in this State. (Nev. Const. Art. 6, § 21; NRS 1.440) The Nevada Constitution requires the Commission to be composed of seven members, including two members appointed by the Nevada Supreme Court. (Nev. Const. Art. 6, § 21) Existing law also provides that if a justice of the peace or a municipal judge is required to appear before the Commission in formal, public proceedings, the Nevada Supreme Court must appoint two justices of the peace or two municipal judges, respectively, to replace the regular Supreme Court appointees for those formal, public proceedings. (NRS 1.440) Under the Nevada Constitution, the Legislature is required to establish the grounds for censure and other disciplinary action against judges and the standards for the investigation of matters relating to the fitness of judges to hold their judicial offices. (Nev. Const. Art. 6, § 21) With regard to disciplinary proceedings against judges, the Nevada Supreme Court has determined that judges have a constitutionally-protected interest in their judicial offices, and when disciplinary proceedings threaten to deprive a judge of that interest, constitutional due process is required. (U.S. Const. Amend. XIV, § 1; Nev. Const. Art. 1, § 8; *Mosley v. Nev. Comm'n on Jud. Discipline*, 117 Nev. 371, 378 (2001)) Constitutional due process requires that a judge accused of misconduct must be given: (1) notice of the charges and an opportunity to respond; and (2) a fair trial of the charges before a fair tribunal. (*Jones v. Nev. Comm'n on Jud. Discipline*, 130 Nev. 99, 105 (2014))



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Although constitutional due process protections are implicated by disciplinary proceedings against a judge, the Nevada Supreme Court has determined that such disciplinary proceedings are divided into two distinct stages, investigatory and adjudicatory, and during the investigatory stage, when evidence is collected and the Commission determines how to proceed against the judge, constitutional due process protections generally do not apply because the Commission's investigatory proceedings do not adjudicate the judge's legal rights and thus do not require constitutional due process protections. Consequently, constitutional due process protections generally do not attach until after the investigatory stage is completed and the Commission files a formal statement of charges, which commences the adjudicatory stage, and the judge is then afforded notice of the charges and an opportunity to respond and defend against the charges in a hearing in which the judge's legal rights are adjudicated by the Commission. (*Jones v. Nev. Comm'n on Jud. Discipline*, 130 Nev. 99, 105-06 (2014)) Even though constitutional due process protections generally do not apply during the investigatory stage of the Commission's proceedings, the Legislature may provide additional procedural protections by statute. (*Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 730-31 & n.52 (2004) (explaining that the Legislature may enact statutes affording greater protections than the minimum protections established by constitutional provisions)) **Section 2** of this bill requires the investigatory and prosecutorial function of the Commission to be separate from the adjudicatory function of the Commission in any matter before the Commission and prohibits any member of the Commission who is involved with the adjudicatory function of the Commission in a particular matter from: (1) receiving any investigatory or informational reports relating to the matter before a hearing; or (2) being provided with any information beyond that which is provided to the judge against whom a formal statement of charges has been filed.

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 1.462 is hereby amended to read as follows:

1.462 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, 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.

3. In any matter before the Commission, the investigatory and prosecutorial function of the Commission, including, without limitation, deciding whether a formal statement of charges should be filed, must be separate from the adjudicatory function of the Commission, including, without limitation, hearing evidence, making factual findings and imposing discipline after a formal complaint of charges is filed. Any member of the Commission who is involved with the adjudicatory function of the Commission in a particular matter must not:



1 (a) *Receive any investigatory or informational reports relating*
2 *to the matter before a hearing; or*

3 (b) *Be provided with any information beyond that which is*
4 *provided to the judge against whom a formal statement of charges*
5 *has been filed.*

6 **Sec. 3.** (Deleted by amendment.)

7 **Sec. 4.** (Deleted by amendment.)

8 **Sec. 5.** (Deleted by amendment.)

9 **Sec. 6.** (Deleted by amendment.)

10 **Sec. 7.** (Deleted by amendment.)

11 **Sec. 8.** The Commission on Judicial Discipline:

12 1. Shall apply the amendatory provisions of this act which
13 govern the procedures applicable to proceedings arising under NRS
14 1.425 to 1.4695, inclusive, to any such proceedings that are within
15 the jurisdiction of the Commission and are commenced on or after
16 the effective date of this act, whether or not the conduct at issue in
17 such proceedings occurred before the effective date of this act.

18 2. May apply the amendatory provisions of this act which
19 govern the procedures applicable to proceedings arising under
20 NRS 1.425 to 1.4695, inclusive, to any such proceedings that were
21 commenced before the effective date of this act and are still within
22 the jurisdiction of the Commission and pending before the
23 Commission on the effective date of this act, unless the Commission
24 determines that such an application would be impracticable,
25 unreasonable or unconstitutional under the circumstances, in which
26 case the Commission shall apply the procedures in effect before the
27 effective date of this act.

28 **Sec. 9.** This act becomes effective upon passage and approval.

