

ASSEMBLY BILL NO. 43—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing judicial discipline.
(BDR 1-393)

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 judiciary; requiring the Nevada Judges of Limited Jurisdiction to advise the Nevada Supreme Court on the appointment of certain members of the Commission on Judicial Discipline in certain circumstances; creating two panels for investigation and adjudication of a complaint against a judge; revising provisions relating to the standard of proof for a hearing before the Commission; removing the requirement that a judge must respond to a complaint; 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 that the Commission 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) **Section 1** of this bill requires the Nevada Supreme Court to make these appointments with the advice of the Nevada Judges of Limited Jurisdiction, which is an association of justices of the peace and municipal judges in this State.

The Nevada Constitution provides that the term of a member of the Commission is 4 years, but the Nevada Constitution and existing law do not establish a limit on the number of terms a member may serve on the Commission.



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(Nev. Const. Art. 6, § 21) **Section 1** of this bill limits a member of the Commission to serving two 4-year terms.

The Nevada Constitution requires the Commission to adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties. (Nev. Const. Art. 6, § 21) **Section 2** of this bill separates the investigative and adjudicative functions of the Commission into two panels. The investigative panel will determine whether formal charges should be filed against a judge. The adjudicative panel will consider the evidence and testimony at the hearing.

Existing law authorizes formal charges to be brought by the Commission when there is reasonable probability that the evidence available for introduction at a formal hearing will prove clearly and convincingly that disciplinary action is appropriate against a judge. (NRS 1.4655, 1.4667, 1.467, 1.468) **Sections 3-6** of this bill authorize formal charges to be brought against a judge when there is a reasonable probability, supported by clear and convincing evidence, of establishing grounds for disciplinary action against the judge. Clear and convincing evidence is proof that requires "evidence establishing every factual element to be highly probable." (*Ferguson v. Las Vegas Metro. Police Dep't.*, 131 Nev. 939, 945 (2015))

Existing law further requires a judge to respond to a complaint filed against him or her. (NRS 1.4667, 1.467) **Sections 4 and 5** of this bill remove the requirement that the judge must respond to the complaint but require the Commission to provide the judge with an opportunity to respond to the complaint.

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

Section 1. 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. 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 presumed to be frivolous and intended solely for the purposes of delay.

3. ~~The~~ *With the advice of the Nevada Judges of Limited Jurisdiction, or its successor organization, the* Supreme Court shall appoint two justices of the peace and two municipal judges to sit on the Commission ~~{for formal, public proceedings}~~ *upon the initiation of a formal investigation* 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}~~ *any* proceedings in place of and to serve for the same terms as the regular members of the Commission appointed by the Supreme Court.



1 **4. Each regular member of the Commission may serve a total**
2 **of two 4-year terms.**

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

4 1.462 1. Proceedings before the Commission are civil matters
5 designed to preserve an independent and honorable judiciary.

6 2. Except as otherwise provided in NRS 1.425 to 1.4695,
7 inclusive, or in the procedural rules adopted by the Commission,
8 after a formal statement of charges has been filed, the Nevada Rules
9 of Civil Procedure apply.

10 **3. In proceedings before the Commission, the investigative**
11 **and adjudicative functions of the Commission must be separated**
12 **into two panels. The investigative panel shall determine whether**
13 **the matter should proceed to the filing of a formal statement of**
14 **charges. If a formal statement of charges is filed, the adjudicative**
15 **panel may only consider the evidence and testimony presented at**
16 **the hearing. Any investigative report or informational report must**
17 **not be provided to the adjudicative panel.**

18 **Sec. 3.** NRS 1.4655 is hereby amended to read as follows:

19 1.4655 1. The Commission may begin an inquiry regarding
20 the alleged misconduct or incapacity of a judge upon the receipt of a
21 complaint.

22 2. The Commission shall not consider complaints arising from
23 acts or omissions that occurred more than 3 years before the date of
24 the complaint or more than 1 year after the complainant knew or in
25 the exercise of reasonable diligence should have known of the
26 conduct, whichever is earlier, except that:

27 (a) Where there is a continuing course of conduct, the conduct
28 will be deemed to have been committed at the termination of the
29 course of conduct;

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

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

38 3. Within 18 months after the receipt of a complaint pursuant
39 to this section, the Commission shall:

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

41 (b) Attempt to resolve the complaint informally as required
42 pursuant to NRS 1.4665;

43 (c) Enter into a deferred discipline agreement pursuant to
44 NRS 1.468;



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

(e) Authorize the filing of a formal statement of the charges based on a finding that there is a reasonable probability ~~{that the evidence available for introduction at a formal hearing could clearly and convincingly establish}~~ , supported by clear and convincing evidence, of establishing grounds for disciplinary action.

Sec. 4. NRS 1.4667 is hereby amended to read as follows:

1.4667 1. The Commission shall review the report prepared pursuant to NRS 1.4663 to determine whether there is a reasonable probability ~~{that the evidence available for introduction at a formal hearing could clearly and convincingly establish}~~ , supported by clear and convincing evidence, of establishing grounds for disciplinary action against a judge.

2. If the Commission determines that such a reasonable probability does not exist, the Commission shall dismiss the complaint with or without a letter of caution. The Commission may consider a letter of caution when deciding the appropriate action to be taken on a subsequent complaint against a judge unless the caution is not relevant to the misconduct alleged in the subsequent complaint.

3. If the Commission determines that such a reasonable probability exists, the Commission shall ~~{require}~~ provide the judge an opportunity to respond to the complaint in accordance with procedural rules adopted by the Commission.

Sec. 5. NRS 1.467 is hereby amended to read as follows:

1.467 1. After providing a judge ~~{responds}~~ an opportunity to respond to the complaint as required pursuant to NRS 1.4667, the Commission shall make a finding of whether there is a reasonable probability ~~{that the evidence available for introduction at a formal hearing could clearly and convincingly establish}~~ , supported by clear and convincing evidence, of establishing grounds for disciplinary action against the judge.

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

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



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

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

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

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

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

5. If the Commission finds that such a reasonable probability exists and that formal proceedings are warranted, the Commission shall, in accordance with its procedural rules, designate special counsel to sign under oath and file with the Commission a formal statement of charges against the judge.

6. Within 20 days after service of the formal statement of charges, the judge shall file an answer with the Commission under oath. If the judge fails to answer the formal statement of charges within that period, the Commission shall deem such failure to be an admission that the charges set forth in the formal statement:

(a) Are true; and

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

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

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

Sec. 6. NRS 1.468 is hereby amended to read as follows:

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



2. The Commission may not enter into an agreement with a judge to defer formal disciplinary proceedings if the Commission has determined, pursuant to NRS 1.467, that there is a reasonable probability ~~[that the evidence available for introduction at a formal hearing could clearly and convincingly establish]~~, supported by clear and convincing evidence, of establishing grounds for disciplinary action against the judge pursuant to NRS 1.4653.

3. The Commission may enter into an agreement with a judge to defer formal disciplinary proceedings only in response to misconduct that is minor in nature.

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

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

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

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

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

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

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

Sec. 7. The Commission on Judicial Discipline:

1. Shall apply the amendatory provisions of this act which govern the procedures applicable to proceedings arising under NRS 1.425 to 1.4695, inclusive, to any such proceedings that are within the jurisdiction of the Commission and commenced on or after October 1, 2021, whether or not the conduct at issue in such proceedings occurred before October 1, 2021.

2. May apply the amendatory provisions of this act which govern the procedures applicable to proceedings arising under



1 NRS 1.425 to 1.4695, inclusive, to any such proceedings that were
2 commenced before October 1, 2021, and are still within the
3 jurisdiction of the Commission and pending before the Commission
4 on October 1, 2021, unless the Commission determines that such an
5 application would be impracticable, unreasonable or
6 unconstitutional under the circumstances, in which case the
7 Commission shall apply the procedures in effect before
8 October 1, 2021.

9 **Sec. 8.** The amendatory provisions of subsection 4 of section 1
10 of this act that limit a regular member of the Commission on
11 Judicial Discipline to serving two 4-year terms apply prospectively
12 on or after October 1, 2021. Terms of service by current or former
13 members of the Commission before October 1, 2021, do not apply
14 towards the two terms a member is permitted to serve under
15 subsection 4 of section 1 of this act. If a current or former member
16 of the Commission begins a new term after October 1, 2021, the
17 new term must be counted as the member's first term for the
18 purpose of subsection 4 of section 1 of this act.

