

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 652
Second Edition Engrossed 4/22/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H652-PCS30607-SA-59

Short Title: Modify Judicial Discipline.

(Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED
AN ACT TO MODIFY THE LAW REGARDING DISCIPLINE FOR JUDGES.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-374.2 reads as rewritten:

"§ 7A-374.2. Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

- (1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.
- (2) "Commission" means the North Carolina Judicial Standards Commission.
- (3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.
- (4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.
- (5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.
- (6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.
- (7) "Public reprimand" means a ~~written action of the Commission issued upon a finding~~ finding by the Supreme Court, based upon a written recommendation by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is ~~minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court.~~ minor. A public reprimand may require that the judge follow a corrective course of action.



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(8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.

(9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court."

SECTION 2. G.S. 7A-376 reads as rewritten:

"§ 7A-376. Grounds for discipline by Commission; public reprimand, censure, suspension, or removal by the Supreme Court.

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of public reprimand, censure, suspension, or removal, may issue to the judge a private letter of ~~caution or may issue to the judge a public reprimand and caution.~~

(b) Upon recommendation of the Commission, the Supreme Court may issue a public reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge."

SECTION 3. G.S. 7A-377 reads as rewritten:

"§ 7A-377. Procedures.

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for public reprimand, censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any investigation that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action

1 predicated upon that information or testimony may be instituted against any complainant,
2 witness, or his or her counsel.

3 (a3) If, after an investigation is completed, the Commission concludes that a letter of
4 caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further
5 proceeding in the matter. The issuance of a letter of caution is confidential in accordance with
6 subsection (a1) of this section.

7 ~~(a4) If, after an investigation is completed, the Commission concludes that a public~~
8 ~~reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and~~
9 ~~shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in~~
10 ~~writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this~~
11 ~~section. A public reprimand, when issued by the Commission and accepted by the respondent~~
12 ~~judge, is not confidential.~~

13 (a5) If, after an investigation is completed, the Commission concludes that disciplinary
14 proceedings should be instituted, the notice and statement of charges filed by the Commission,
15 along with the answer and all other pleadings, are not remain confidential. Disciplinary hearings
16 ordered by the Commission are ~~not~~ confidential, and recommendations of the Commission to
17 the Supreme Court, along with the record filed in support of such recommendations are ~~not~~
18 confidential. Testimony and other evidence presented to the Commission is privileged in any
19 action for defamation. At least five members of the Commission must concur in any
20 recommendation to issue a public reprimand, censure, suspend, or remove any judge. A
21 respondent who is recommended for public reprimand, censure, suspension, or removal is
22 entitled to a copy of the proposed record to be filed with the Supreme Court, and if the
23 respondent has objections to it, to have the record settled by the Commission's chair. The
24 respondent is also entitled to present a brief and to argue the respondent's case, in person and
25 through counsel, to the Supreme Court. A majority of the members of the Supreme Court
26 voting must concur in any order of public reprimand, censure, suspension, or removal. The
27 Supreme Court may approve the recommendation, remand for further proceedings, or reject the
28 recommendation. A justice of the Supreme Court or a member of the Commission who is a
29 judge is disqualified from acting in any case in which he is a respondent.

30 (a6) Upon issuance of a public reprimand, censure, suspension, or removal by the
31 Supreme Court, the notice and statement of charges filed by the Commission along with the
32 answer and all other pleadings, and recommendations of the Commission to the Supreme Court
33 along with the record filed in support of such recommendations, are no longer confidential.

34 (b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

35 (c) The Commission may issue advisory opinions to judges, in accordance with rules
36 and procedures adopted by the Commission.

37 (d) The Commission has the same power as a trial court of the General Court of Justice
38 to punish for contempt, or for refusal to obey lawful orders or process issued by the
39 Commission."

40 **SECTION 4.** G.S. 7A-378 is repealed.

41 **SECTION 5.** This act is effective when it becomes law.