

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1417  
Committee Substitute Favorable 5/26/05

Short Title: Revise Judicial Standards Commission. (Public)

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Sponsors:

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Referred to:

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April 21, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE AND UPDATE THE PROCEDURES AND  
3 RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND  
4 TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 30 of Chapter 7A of the General Statutes reads as  
7 rewritten:

8 "Article 30.

9 "Judicial Standards Commission.

10 "§ 7A-373. Purpose.

11 The purpose of this Article is to provide for the investigation and resolution of  
12 inquiries concerning the qualification or conduct of any judge or justice of the General  
13 Court of Justice. The procedure for discipline of any judge or justice of the General  
14 Court of Justice shall be in accordance with the provisions of this Article. Nothing in  
15 this Article shall affect the impeachment of judges under the North Carolina  
16 Constitution, Article IV, Sections 4 and 17.

17 "§ 7A-374. Definitions.

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

20 (1) "Commission" means the North Carolina Judicial Standards  
21 Commission.

22 (2) "Judge" means any justice or judge of the General Court of Justice of  
23 North Carolina, including any retired justice or judge who is recalled  
24 for service as an emergency judge of any division of the General Court  
25 of Justice.

26 (3) "Incapacity" means any physical, mental, or emotional condition that  
27 seriously interferes with the ability of a judge to perform the duties of  
28 judicial office.

- 1           (4)   "Investigation" means the gathering of information with respect to  
2           alleged misconduct or disability.
- 3           (5)   "Letter of caution" means a written action of the Commission that  
4           cautions a judge not to engage in certain conduct that violates the Code  
5           of Judicial Conduct as adopted by the Supreme Court.
- 6           (6)   "Public reprimand" means a written action of the Commission issued  
7           upon a finding by the Commission that a judge has violated the Code  
8           of Judicial Conduct and has engaged in conduct prejudicial to the  
9           administration of justice, but that misconduct is minor and does not  
10          warrant a recommendation by the Commission that the judge be  
11          disciplined by the Supreme Court. A public reprimand may require  
12          that the judge follow a corrective course of action.
- 13          (7)   "Censure" means a finding by the Supreme Court, based upon a  
14          written recommendation by the Commission, that a judge has willfully  
15          engaged in misconduct prejudicial to the administration of justice that  
16          brings the judicial office into disrepute, but which does not warrant the  
17          suspension of the judge from the judge's judicial duties or the removal  
18          of the judge from judicial office. A censure may require that the judge  
19          follow a corrective course of action. Unless otherwise ordered by the  
20          Supreme Court, the judge shall personally appear in the Supreme  
21          Court to receive a censure.
- 22          (8)   "Suspension" means a finding by the Supreme Court, based upon a  
23          written recommendation by the Commission, that a judge is  
24          temporarily incapacitated, or that a judge has willfully engaged in  
25          misconduct prejudicial to the administration of justice that brings the  
26          judicial office into disrepute, to such a degree that the judge should be  
27          relieved of the duties of the judge's office for a period of time, and  
28          upon conditions, including those regarding treatment and  
29          compensation, as may be specified by the Supreme Court.
- 30          (9)   "Removal" means a finding by the Supreme Court, based upon a  
31          written recommendation by the Commission, that a judge is suffering  
32          from an incapacity that is, or is likely to become, permanent, or that a  
33          judge has willfully engaged in misconduct prejudicial to the  
34          administration of justice that brings the judicial office into disrepute, to  
35          such a degree that the judge should be relieved of all duties of the  
36          judge's office and disqualified from holding further judicial office.

37   **§ 7A-375. Judicial Standards Commission.**

38    (a)   The Judicial Standards Commission shall consist of: of the following  
39    residents of North Carolina: one Court of Appeals judge, ~~one~~ two superior court judge,  
40    judges, and ~~one~~ two district court judge, judges, each appointed by the Chief Justice of  
41    the Supreme Court; ~~two~~ four members of the State Bar who have actively practiced in  
42    the courts of the State for at least 10 years, elected by the State Bar Council; and ~~two~~  
43    ~~four~~ citizens who are not judges, active or retired, nor members of the State Bar,  
44    ~~appointed by the Governor.~~ two appointed by the Governor, one by the President Pro

1 Tempore of the Senate, and one by the Speaker of the House of Representatives. The  
2 Court of Appeals judge shall act as chair of the Commission.

3 (b) Terms of Commission members shall be for six years, except that, to achieve  
4 overlapping of terms, one of the judges, one of the practicing members of the State Bar,  
5 and one of the citizens shall be appointed initially for a term of only three years. years,  
6 and except that the Court of Appeals judge shall serve at the pleasure of the Chief  
7 Justice. Initial terms of the following members appointed to the Commission effective  
8 January 1, 2006, shall be for three-year terms: one district court judge, one member of  
9 the North Carolina State Bar, and one citizen. No member who has served a full  
10 six-year term is eligible for reappointment. If a member ceases to have the qualifications  
11 required for his the member's appointment, he that person ceases to be a member.  
12 Vacancies are filled in the same manner as the original appointment, for the remainder  
13 of the term. Members who are not judges are entitled to per diem and all members are  
14 entitled to reimbursement for travel and subsistence expenses at the rate applicable to  
15 members of State boards and commissions generally, for each day engaged in official  
16 business.

17 (c) If a member of the Commission who is a judge becomes disabled, or becomes  
18 a respondent before the Commission, the Chief Justice shall appoint an alternate  
19 member to serve during the period of disability or disqualification. The alternate  
20 member shall be from the same division of the General Court of Justice as the judge  
21 whose place he the alternate member takes. If a member of the Commission who is not  
22 a judge becomes disabled, the Governor, if he the Governor appointed the disabled  
23 member, shall appoint, or the State Bar Council, if it elected the disabled member, shall  
24 elect, an alternate member to serve during the period of disability. In a particular case, if  
25 a member disqualifies himself, becomes disqualified, or is successfully challenged for  
26 cause, his the member's seat for that case shall be filled by an alternate member selected  
27 as provided in this subsection.

28 (d) A member may serve after expiration of his the member's term only to  
29 participate until the conclusion of a formal proceeding begun before expiration of his  
30 the member's term. Such participation shall not prevent his the successor from taking  
31 office, but the successor may not participate in the proceeding for which his the  
32 predecessor's term was extended. This subsection shall apply also to any judicial  
33 member whose membership on the Commission is automatically terminated by  
34 retirement or resignation from judicial office, or expiration of the term of judicial office.

35 (e) Members of the Commission and its employees shall be immune from civil  
36 suit for all conduct undertaken in the course of their official duties.

37 (f) The chair of the Commission may employ, if funds are appropriated for that  
38 purpose, an executive director, Commission counsel, investigator, and any support staff  
39 as may be necessary to assist the Commission in carrying out its duties. With the  
40 approval of the Chief Justice, for specific cases, the Chair may also employ special  
41 counsel or call upon the Attorney General to furnish counsel. In addition, with the  
42 approval of the Chief Justice, for specific cases, the Chair or executive director may also  
43 call upon the Director of the State Bureau of Investigation to furnish an investigator  
44 who shall serve under the supervision of the executive director. While performing duties

1 for the Commission, the executive secretary, counsel, or investigator has authority  
2 throughout the State to serve subpoenas or other process issued by the Commission in  
3 the same manner and with the same effect as an officer authorized to serve process of  
4 the General Court of Justice.

5 (g) The Commission may adopt, and may amend from time to time, its own rules  
6 of procedure for the performance of the duties and responsibilities prescribed by this  
7 Article, subject to the approval of the Supreme Court.

8 **"§ 7A-376. Grounds for censure or removal. Grounds for discipline by**  
9 **Commission; censure, suspension, or removal by the Supreme Court.**

10 (a) The Commission upon a determination that any judge has engaged in conduct  
11 that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme  
12 Court but that is not of such a nature as would warrant a recommendation of censure,  
13 suspension, or removal, may privately admonish the judge against engaging in that  
14 conduct, or may issue a public reprimand to the judge.

15 (b) Upon recommendation of the Commission, the Supreme Court may ~~censure~~  
16 ~~or remove~~ censure, suspend, or remove any judge for willful misconduct in office,  
17 willful and persistent failure to perform ~~his~~ the judge's duties, habitual intemperance,  
18 conviction of a crime involving moral turpitude, or conduct prejudicial to the  
19 administration of justice that brings the judicial office into disrepute. ~~Upon~~  
20 ~~recommendation of the Commission, the Supreme Court may remove any judge for~~  
21 ~~mental or physical incapacity interfering with the performance of his duties, which is, or~~  
22 ~~is likely to become, permanent. A judge who is suspended for any of the foregoing~~  
23 ~~reasons shall receive no compensation during the period of that suspension. A judge~~  
24 ~~who is removed for any of the foregoing reasons shall receive no retirement~~  
25 ~~compensation and is disqualified from holding further judicial office.~~

26 (c) Upon recommendation of the Commission, the Supreme Court may suspend,  
27 for a period of time the Supreme Court deems necessary, any judge for temporary  
28 physical or mental incapacity interfering with the performance of the judge's duties, and  
29 may remove any judge for physical or mental incapacity interfering with the  
30 performance of the judge's duties which is, or is likely to become, permanent. A judge  
31 who is suspended for temporary incapacity shall continue to receive compensation  
32 during the period of the suspension. A judge removed for mental or physical incapacity  
33 is entitled to retirement compensation if ~~he~~ the judge has accumulated the years of  
34 creditable service required for incapacity or disability retirement under any provision of  
35 State law, but he shall not sit as an emergency justice or judge. ~~A judge removed for~~  
36 ~~other than mental or physical incapacity receives no retirement compensation, and is~~  
37 ~~disqualified from holding further judicial office.~~

38 **"§ 7A-377. Procedures; employment of executive secretary, special counsel or**  
39 **investigator.**

40 (a) Any citizen of the State may file a written complaint with the Commission  
41 concerning the qualifications or conduct of any justice or judge of the General Court of  
42 Justice, and thereupon the Commission shall make such investigation as it deems  
43 necessary. The Commission may also make an investigation on its own motion. The  
44 Commission ~~is authorized to~~ may issue process to compel the attendance of witnesses

1 and the production of evidence, to administer oaths, ~~and to punish for contempt, and to~~  
2 ~~prescribe its own rules of procedure.~~ contempt. No justice or judge shall be  
3 recommended for censure or removal unless he has been given a hearing affording due  
4 process of law.

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

11 (a2) Information submitted to the Commission or its staff, and testimony given in  
12 any proceeding before the Commission, shall be absolutely privileged, and no civil  
13 action predicated upon that information or testimony may be instituted against any  
14 complainant, witness, or his or her counsel.

15 (a3) If, after the preliminary investigation is completed, the Commission  
16 concludes that a letter of caution is appropriate, it shall issue a letter of caution to the  
17 judge in lieu of any further proceeding in the matter. The issuance of a letter of caution  
18 shall be confidential in accordance with subsection (a) of this section.

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

25 (a5) ~~After~~ If, after the preliminary formal investigation is completed, and if the  
26 Commission concludes that formal disciplinary proceedings should be instituted, the  
27 notice and ~~complaint~~ statement of charges filed by the Commission, along with the  
28 answer and all other pleadings, are not confidential. Formal Disciplinary hearings  
29 ordered by the Commission are not confidential, and recommendations of the  
30 Commission to the Supreme Court, along with the record filed in support of such  
31 recommendations are not confidential. Testimony and other evidence presented to the  
32 Commission is privileged in any action for defamation. At least five members of the  
33 Commission must concur in any recommendation to censure or remove any ~~justice or~~  
34 judge. A respondent who is recommended for ~~censure or removal~~ censure, suspension,  
35 or removal is entitled to a copy of the proposed record to be filed with the Supreme  
36 Court, and if ~~he~~ the respondent has objections to it, to have the record settled by the  
37 ~~Commission.~~ Commission's chair. ~~He~~ The respondent is also entitled to present a brief  
38 and to argue ~~his~~ the respondent's case, in person and through counsel, to the Supreme  
39 Court. A majority of the members of the Supreme Court voting must concur in any  
40 order of ~~censure~~ censure, suspension, or removal. The Supreme Court may approve the  
41 recommendation, remand for further proceedings, or reject the recommendation. A  
42 justice of the Supreme Court or a member of the Commission who is a judge is  
43 disqualified from acting in any case in which he is a respondent.

1       ~~(b) The chair of the Commission is authorized to employ an executive secretary~~  
2 ~~to assist the Commission in carrying out its duties. For specific cases, the Commission~~  
3 ~~may also employ special counsel or call upon the Attorney General to furnish counsel.~~  
4 ~~For specific cases, the Commission may also employ an investigator or call upon the~~  
5 ~~Director of the State Bureau of Investigation to furnish an investigator. While~~  
6 ~~performing duties for the Commission such executive secretary, special counsel or~~  
7 ~~investigator shall have authority throughout the State to serve subpoenas or other~~  
8 ~~process issued by the Commission in the same manner and with the same effect as an~~  
9 ~~officer authorized to serve process of the General Court of Justice.~~

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

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

15 **"§ 7A-378. Censure or removal of justice of Supreme Court.**

16       (a) The recommendation of the Judicial Standards Commission for ~~eensure~~  
17 censure, suspension, or removal of any justice of the Supreme Court for any grounds  
18 provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of  
19 Appeals, which shall have and shall proceed under the same authority for censure or  
20 removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and  
21 7A-377(a) for censure or removal of any judge.

22       (b) The proceeding shall be heard by a panel of the Court of Appeals consisting  
23 of the Chief Judge, who shall be the presiding judge of the panel, and six other judges,  
24 the senior in service, excluding the judge who is chairman of the ~~commission.~~  
25 Commission. For good cause, a judge may be excused by a majority of the panel. If the  
26 Chief Judge is excused, the presiding judge shall be designated by a majority of the  
27 panel. The vacancy created by an excused judge shall be filled by the judge of the court  
28 who is next senior in service."

29               **SECTION 2.** This act becomes effective January 1, 2006.