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An Act

HOUSE CONCURRENT RESOLUTION 23-1001

BY REPRESENTATIVE(S) Weissman and Lynch, Bacon, Amabile, Bird, Boesenecker, Brown, Catlin, deGruy Kennedy, Frizell, Froelich, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lieder, Lindsay, Marshall, Ricks, Sirota, Snyder, Soper, Story, Titone, Young, McCluskie, Epps, English, Mauro, Michaelson Jenet, Sharbini;
also SENATOR(S) Gardner and Gonzales, Moreno, Van Winkle, Buckner, Cutter, Danielson, Exum, Hansen, Kirkmeyer, Liston, Lundeen, Mullica, Priola, Roberts, Rodriguez, Smallwood, Sullivan, Winter F.

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING JUDICIAL DISCIPLINE, AND, IN CONNECTION THEREWITH, ESTABLISHING AN INDEPENDENT JUDICIAL DISCIPLINE ADJUDICATIVE BOARD, SETTING STANDARDS FOR JUDICIAL REVIEW OF A DISCIPLINE CASE, AND CLARIFYING WHEN DISCIPLINE PROCEEDINGS BECOME PUBLIC.

Be It Resolved by the House of Representatives of the Seventy-fourth General Assembly of the State of Colorado, the Senate concurring herein:

SECTION 1. At the election held on November 5, 2024, the secretary of state shall submit to the registered electors of the state the ballot

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

title set forth in section 2 for the following amendment to the state constitution:

In the constitution of the state of Colorado, section 23 of article VI, **amend** (3)(a), (3)(e), (3)(f), (3)(g), and (3)(h); and **add** (3)(c.5) and (3)(k) as follows:

Section 23. Retirement and removal of justices and judges.

(3) (a) There shall be a commission on judicial discipline. It shall consist of: Two judges of district courts and two judges of county courts, each selected by the supreme court, AS PROVIDED BY LAW; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate. AN APPOINTING AUTHORITY SHALL NOT APPOINT A MEMBER OF THE INDEPENDENT JUDICIAL DISCIPLINE ADJUDICATIVE BOARD ESTABLISHED IN SUBSECTION (3)(c.5) OF THIS SECTION TO THE COMMISSION.

(c.5) (I) THERE IS CREATED THE INDEPENDENT JUDICIAL DISCIPLINE ADJUDICATIVE BOARD AS AN INDEPENDENT AGENCY WITHIN THE JUDICIAL DEPARTMENT. THE ADJUDICATIVE BOARD SHALL CONDUCT FORMAL JUDICIAL DISCIPLINARY PROCEEDINGS. THE ADJUDICATIVE BOARD ALSO SHALL HEAR APPEALS OF THE COMMISSION'S ORDERS OF INFORMAL REMEDIAL ACTION. APPEALS TO THE ADJUDICATIVE BOARD ARE CONFIDENTIAL. THE ADJUDICATIVE BOARD CONSISTS OF FOUR DISTRICT COURT JUDGES WITHOUT ANY JUDICIAL OR ATTORNEY DISCIPLINARY HISTORY, APPOINTED BY THE SUPREME COURT; FOUR ATTORNEYS WITHOUT ANY JUDICIAL OR ATTORNEY DISCIPLINARY HISTORY WHO ARE LICENSED TO PRACTICE LAW IN COLORADO AND WHO RESIDE IN COLORADO, APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE; AND FOUR CITIZENS WHO ARE NOT JUDGES OR ATTORNEYS LICENSED TO PRACTICE LAW IN COLORADO, APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE. AN APPOINTING AUTHORITY SHALL NOT APPOINT A MEMBER OF THE COMMISSION TO THE ADJUDICATIVE BOARD. FOR THE PURPOSE OF STAGGERING TERMS, WHEN MAKING THE INITIAL APPOINTMENTS TO THE ADJUDICATIVE BOARD, THE APPOINTING AUTHORITY SHALL DESIGNATE TWO MEMBERS FROM EACH CATEGORY TO A FIVE-YEAR TERM AND TWO MEMBERS FROM EACH CATEGORY TO A

THREE-YEAR TERM. ALL SUBSEQUENT APPOINTMENTS ARE FOR A TERM OF FIVE YEARS; EXCEPT THAT IN THE EVENT OF A VACANCY ON THE ADJUDICATIVE BOARD, THE ORIGINAL APPOINTING AUTHORITY SHALL APPOINT, IN THE SAME MANNER AS AN ORIGINAL APPOINTMENT, A REPLACEMENT TO SERVE THE REMAINDER OF THE TERM.

(II) UPON ORDER OF A FORMAL HEARING PURSUANT TO SUBSECTION (3)(e) OF THIS SECTION, A PANEL OF THE ADJUDICATIVE BOARD SHALL CONVENE TO CONDUCT THE HEARING. A PANEL CONSISTS OF ONE JUDGE, ONE ATTORNEY LICENSED TO PRACTICE LAW IN COLORADO, AND ONE CITIZEN. THE STATE COURT ADMINISTRATOR, OR THE ADMINISTRATOR'S DESIGNEE, SHALL RANDOMLY SELECT THE PANEL FROM AMONG THE ADJUDICATIVE BOARD'S MEMBERSHIP. THE RANDOM SELECTION OF A PANEL IS A PURELY ADMINISTRATIVE FUNCTION.

(e) (I) The commission may, after such investigation as it deems necessary, DISMISS A COMPLAINT, order informal remedial action, OR order a formal hearing to be held before ~~it~~ A PANEL OF THE ADJUDICATIVE BOARD concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge. ~~or request the supreme court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter and to report thereon to the commission.~~ THE RESPONDENT JUSTICE OR JUDGE MAY APPEAL THE COMMISSION'S ORDER FOR INFORMAL REMEDIAL ACTION TO A PANEL OF THE ADJUDICATIVE BOARD. THE ADJUDICATIVE PANEL SHALL REVIEW THE COMMISSION'S INFORMAL REMEDIAL ACTION ORDER FOR ABUSE OF DISCRETION. AN APPEAL OF AN INFORMAL REMEDIAL ACTION ORDER IS CONFIDENTIAL CONSISTENT WITH SUBSECTION (3)(g) OF THIS SECTION.

(II) After a formal hearing, ~~or after considering the record and report of the masters, if the commission finds good cause therefor, it~~ THE ADJUDICATIVE PANEL may DISMISS THE CHARGES BEFORE IT; take informal remedial action; ~~or it may recommend to the supreme court~~ ORDER the removal, retirement, suspension, censure, reprimand, or OTHER discipline, as the case may be, of the justice or judge. The ~~commission~~ ADJUDICATIVE PANEL may also ~~recommend~~ ORDER that the costs of ~~its~~ THE investigation and hearing be assessed against such justice or judge. THE JUSTICE OR JUDGE MAY APPEAL AN ADJUDICATIVE PANEL'S DISCIPLINARY ORDER, AND THE COMMISSION MAY APPEAL AN ADJUDICATIVE PANEL'S DISMISSAL OR DISCIPLINARY ORDER, TO THE SUPREME COURT OR, WHEN THE

CIRCUMSTANCES DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS SECTION ARE PRESENT, TO THE TRIBUNAL DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS SECTION.

~~(f) (I) Following receipt of a recommendation from the commission, the supreme court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order~~ ON APPEAL OF AN ADJUDICATIVE PANEL'S ORDER FOR removal, retirement, suspension, censure, reprimand, or OTHER discipline, ~~as it finds just and proper, or wholly reject the recommendation~~ OR A PANEL'S DISMISSAL OF CHARGES, THE SUPREME COURT, OR THE TRIBUNAL DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS SECTION IF THE TRIBUNAL IS HEARING THE APPEAL, SHALL REVIEW THE RECORD OF THE PROCEEDINGS ON THE LAW AND FACTS. WHEN REVIEWING THE ADJUDICATIVE PANEL'S DECISION, THE SUPREME COURT SHALL REVIEW MATTERS OF LAW DE NOVO, REVIEW FACTUAL MATTERS TO DETERMINE WHETHER THE ADJUDICATIVE PANEL'S DETERMINATION IS CLEARLY ERRONEOUS, AND REVIEW ANY SANCTIONS IMPOSED BY THE ADJUDICATIVE PANEL FOR ABUSE OF DISCRETION. ~~Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order. On the entry of an order for retirement or for removal of a judge, his office shall be deemed vacant.~~

(II) IN PROCEEDINGS IN WHICH THE CIRCUMSTANCES DESCRIBED IN THIS SUBSECTION (3)(f)(II) ARE PRESENT, A TRIBUNAL COMPRISED OF SEVEN JUDGES OF THE COURT OF APPEALS AND DISTRICT COURT SHALL REVIEW THE DECISION OF THE ADJUDICATIVE PANEL OR HEAR ANY OTHER APPEAL IN THE SAME MANNER AND USE THE SAME STANDARDS OF REVIEW AS THE SUPREME COURT WHEN IT REVIEWS DECISIONS AND HEARS APPEALS AS DESCRIBED IN SUBSECTION (3)(f)(I) OF THIS SECTION. THE STATE COURT ADMINISTRATOR, OR THE ADMINISTRATOR'S DESIGNEE, SHALL RANDOMLY SELECT MEMBERS OF THE TRIBUNAL FROM AMONG ALL DISTRICT JUDGES AND COURT OF APPEALS JUDGES WHO DO NOT HAVE A CURRENT DISCIPLINARY INVESTIGATION OR PROCEEDING PENDING BEFORE THE COMMISSION OR ADJUDICATIVE BOARD; HAVE NOT RECEIVED A DISCIPLINARY SANCTION FROM THE COMMISSION, ADJUDICATIVE BOARD, OR SUPREME COURT; AND ARE NOT OTHERWISE REQUIRED BY LAW, COURT RULE, OR JUDICIAL CANON TO RECUSE THEMSELVES FROM THE TRIBUNAL. A TRIBUNAL MUST NOT INCLUDE MORE

THAN ONE MEMBER WHO IS A COURT OF APPEALS JUDGE AND NOT MORE THAN ONE DISTRICT JUDGE FROM ANY ONE JUDICIAL DISTRICT. THE RANDOM SELECTION OF TRIBUNAL MEMBERS IS A PURELY ADMINISTRATIVE FUNCTION. THE TRIBUNAL SHALL REVIEW DECISIONS AND HEAR ANY OTHER APPEALS IN THE FOLLOWING CIRCUMSTANCES:

(A) WHEN THE PROCEEDINGS INVOLVE A COMPLAINT AGAINST A COLORADO SUPREME COURT JUSTICE;

(B) WHEN A COLORADO SUPREME COURT JUSTICE IS A COMPLAINANT OR A MATERIAL WITNESS IN THE PROCEEDING;

(C) WHEN A STAFF MEMBER TO A COLORADO SUPREME COURT JUSTICE IS A COMPLAINANT OR MATERIAL WITNESS IN THE PROCEEDING;

(D) WHEN A FAMILY MEMBER OF A COLORADO SUPREME COURT JUSTICE IS A COMPLAINANT OR MATERIAL WITNESS IN THE PROCEEDING; OR

(E) WHEN ANY OTHER CIRCUMSTANCES EXIST DUE TO WHICH MORE THAN TWO COLORADO SUPREME COURT JUSTICES HAVE RECUSED THEMSELVES FROM THE PROCEEDING.

(III) UPON A DETERMINATION THAT A SANCTION IMPOSED BY THE ADJUDICATIVE PANEL IS AN ABUSE OF DISCRETION, THE SUPREME COURT OR, IF APPLICABLE, THE TRIBUNAL, SHALL REMAND THE PROCEEDINGS TO THE PANEL THAT IMPOSED THE SANCTION WITH DIRECTIONS THE COURT OR TRIBUNAL DEEMS NECESSARY.

(IV) UPON AN ORDER FOR RETIREMENT, THE JUSTICE OR JUDGE IS RETIRED WITH THE SAME RIGHTS AND PRIVILEGES AS IF THE JUSTICE OR JUDGE RETIRED PURSUANT TO STATUTE. UPON AN ORDER FOR REMOVAL, THE JUSTICE OR JUDGE IS REMOVED FROM OFFICE AND THE JUSTICE'S OR JUDGE'S SALARY CEASES FROM THE DATE OF THE ORDER. ON THE ENTRY OF AN ORDER FOR RETIREMENT OR FOR REMOVAL OF A JUSTICE OR JUDGE, THE JUSTICE'S OR JUDGE'S OFFICE IS DEEMED VACANT.

(g) (I) ~~Prior to the filing of a recommendation to the supreme court by the commission~~ COMMENCEMENT OF FORMAL DISCIPLINARY PROCEEDINGS against any justice or judge, all papers filed with and proceedings before the commission on judicial discipline ~~or masters~~

~~appointed by the supreme court, pursuant to this subsection (3), shall be~~ ARE confidential, ~~and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged~~ IS CONFIDENTIAL. A PERSON IS ABSOLUTELY IMMUNE FROM ANY ACTION FOR DEFAMATION BASED ON PAPERS FILED WITH OR TESTIMONY BEFORE THE COMMISSION, THE ADJUDICATIVE BOARD, THE SUPREME COURT, OR THE TRIBUNAL, BUT NO OTHER PUBLICATION OF THE PAPERS OR PROCEEDINGS HAS ABSOLUTE IMMUNITY IN ANY ACTION FOR DEFAMATION and a writing ~~which~~ THAT was privileged prior to its filing with the commission ~~or the masters~~ does not lose such privilege by such filing.

(II) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENT DESCRIBED IN THIS SUBSECTION (3)(g), THE COMMISSION MAY:

(A) RELEASE INFORMATION ABOUT THE STATUS OF AN EVALUATION, INVESTIGATION, OR PROCEEDING TO THE VICTIM OF MISCONDUCT OR THE COMPLAINANT;

(B) RELEASE INFORMATION ABOUT A COMPLAINT THAT RESULTED IN INFORMAL REMEDIAL ACTION OR PUBLIC DISCIPLINE OF A JUDGE OR JUSTICE TO THE STATE COURT ADMINISTRATOR AS NECESSARY FOR THE SELECTION OF A TRIBUNAL PURSUANT TO SUBSECTION (3)(f)(II) OF THIS SECTION; ANY RELEVANT COMMISSION ON JUDICIAL PERFORMANCE OR JUDICIAL NOMINATING COMMISSION, THE OFFICE OF ATTORNEY REGULATION COUNSEL, AND THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE, OR SUCCESSORS TO EACH COMMISSION OR OFFICE; THE OFFICE OF THE GOVERNOR, FOR THE PURPOSE OF JUDICIAL APPOINTMENTS; THE JUDICIAL DEPARTMENT, FOR THE PURPOSE OF REVIEWING APPLICANTS FOR THE SENIOR JUDGE PROGRAM AND APPOINTMENTS TO THE ADJUDICATIVE BOARD PURSUANT TO SUBSECTION (3)(c.5)(I) OF THIS SECTION; AND OTHER LIMITED RECIPIENTS CONSISTENT WITH THE PURPOSES OF THIS SECTION ALLOWED BY RULE; AND

(C) MAKE PUBLICLY AVAILABLE AGGREGATE INFORMATION ABOUT TRENDS OR PATTERNS IN COMPLAINTS MADE TO THE COMMISSION, BUT THE COMMISSION SHALL NOT MAKE PUBLIC ANY INFORMATION THAT IDENTIFIES ANY SPECIFIC PERSON OR COMPLAINT.

(III) A RECIPIENT OF CONFIDENTIAL INFORMATION PURSUANT TO SUBSECTION (3)(g)(II)(B) OF THIS SECTION SHALL PRESERVE THE CONFIDENTIALITY OF THE INFORMATION SUBJECT TO ANY SANCTIONS FOR VIOLATION OF CONFIDENTIALITY AS MAY BE PROVIDED BY LAW.

(IV) THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR CONFIDENTIAL REPORTING AND COMPLAINANT RIGHTS CONSISTENT WITH SUBSECTION (3)(g)(II) OF THIS SECTION.

~~(h) The supreme court shall by rule provide for procedures before the commission on judicial discipline, the masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by the commission in its proceedings.~~ A justice or judge who is a member of the ~~commission~~ COMMISSION, ADJUDICATIVE BOARD, TRIBUNAL, or supreme court shall not participate in any proceedings involving ~~his~~ THE JUSTICE'S OR JUDGE'S own removal or retirement.

(k) (I) THERE IS CREATED A RULE-MAKING COMMITTEE TO ADOPT RULES FOR THE JUDICIAL DISCIPLINE PROCESS. THE RULE-MAKING COMMITTEE CONSISTS OF FOUR MEMBERS APPOINTED BY THE SUPREME COURT; FOUR MEMBERS APPOINTED BY THE ADJUDICATIVE BOARD; FOUR MEMBERS APPOINTED BY THE COMMISSION; AND ONE VICTIM'S ADVOCATE, AS DEFINED IN LAW, APPOINTED BY THE GOVERNOR. MEMBERS SERVE AT THE PLEASURE OF THEIR APPOINTING AUTHORITY. THE RULE-MAKING COMMITTEE SHALL ELECT A CHAIR WHO IS A MEMBER OF THE COMMITTEE. THE RULES MUST INCLUDE THE STANDARDS AND DEGREE OF PROOF TO BE APPLIED IN JUDICIAL DISCIPLINE PROCEEDINGS; CONFIDENTIAL REPORTING PROCEDURES; AND COMPLAINANT RIGHTS DURING THE EVALUATION, INVESTIGATION, AND HEARING PROCESS. THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR CONFIDENTIAL REPORTING AND COMPLAINANT RIGHTS.

(II) THE RULE-MAKING COMMITTEE MAY PROMULGATE SPECIFIC RULES GOVERNING PROCEEDINGS BEFORE A PANEL OF THE ADJUDICATIVE BOARD. THE COLORADO RULES OF EVIDENCE AND COLORADO RULES OF CIVIL PROCEDURE, AS AMENDED, APPLY TO PROCEEDINGS BEFORE A PANEL OF THE ADJUDICATIVE BOARD UNTIL AND UNLESS THE RULE-MAKING COMMITTEE PROMULGATES RULES GOVERNING PANEL PROCEEDINGS. RULES PROMULGATED PURSUANT TO THIS SUBSECTION (3)(k)(II) APPLY TO FORMAL PROCEEDINGS INITIATED ON OR AFTER APRIL 1, 2025.

SECTION 2. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution concerning judicial discipline, and, in connection therewith, establishing an independent judicial discipline adjudicative board, setting standards for judicial review of a discipline case, and clarifying when discipline proceedings become public?".

SECTION 3. Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if at least fifty-five percent of the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the state constitution.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)