

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:

1 Under existing law, the Commission on Judicial Discipline has exclusive
2 jurisdiction over the public censure, removal, involuntary retirement and other
3 discipline of judges in this State. (Nev. Const. Art. 6, § 21; NRS 1.440) The Nevada
4 Constitution requires the Commission to be composed of seven members, including
5 two members appointed by the Nevada Supreme Court. (Nev. Const. Art. 6, § 21)
6 Existing law also provides that if a justice of the peace or a municipal judge is
7 required to appear before the Commission in formal, public proceedings, the
8 Nevada Supreme Court must appoint two justices of the peace or two municipal
9 judges, respectively, to replace the regular Supreme Court appointees for those
10 formal, public proceedings. (NRS 1.440) Under the Nevada Constitution, the
11 Legislature is required to establish the grounds for censure and other disciplinary
12 action against judges and the standards for the investigation of matters relating to
13 the fitness of judges to hold their judicial offices. (Nev. Const. Art. 6, § 21) With
14 regard to disciplinary proceedings against judges, the Nevada Supreme Court has
15 determined that judges have a constitutionally-protected interest in their judicial
16 offices, and when disciplinary proceedings threaten to deprive a judge of that
17 interest, constitutional due process is required. (U.S. Const. Amend. XIV, § 1; Nev.
18 Const. Art. 1, § 8; *Mosley v. Nev. Comm’n on Jud. Discipline*, 117 Nev. 371, 378
19 (2001)) Constitutional due process requires that a judge accused of misconduct
20 must be given: (1) notice of the charges and an opportunity to respond; and (2) a
21 fair trial of the charges before a fair tribunal. (*Jones v. Nev. Comm’n on Jud.*
22 *Discipline*, 130 Nev. 99, 105 (2014))



23 Although constitutional due process protections are implicated by disciplinary
24 proceedings against a judge, the Nevada Supreme Court has determined that such
25 disciplinary proceedings are divided into two distinct stages, investigatory and
26 adjudicatory, and during the investigatory stage, when evidence is collected and the
27 Commission determines how to proceed against the judge, constitutional due
28 process protections generally do not apply because the Commission's investigatory
29 proceedings do not adjudicate the judge's legal rights and thus do not require
30 constitutional due process protections. Consequently, constitutional due process
31 protections generally do not attach until after the investigatory stage is completed
32 and the Commission files a formal statement of charges, which commences the
33 adjudicatory stage, and the judge is then afforded notice of the charges and an
34 opportunity to respond and defend against the charges in a hearing in which the
35 judge's legal rights are adjudicated by the Commission. (*Jones v. Nev. Comm'n on*
36 *Jud. Discipline*, 130 Nev. 99, 105-06 (2014)) Even though constitutional due
37 process protections generally do not apply during the investigatory stage of the
38 Commission's proceedings, the Legislature may provide additional procedural
39 protections by statute. (*Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound*
40 *Gov't*, 120 Nev. 712, 730-31 & n.52 (2004) (explaining that the Legislature may
41 enact statutes affording greater protections than the minimum protections
42 established by constitutional provisions)) **Section 2** of this bill requires the
43 investigatory and prosecutorial function of the Commission to be separate from the
44 adjudicatory function of the Commission in any matter before the Commission and
45 prohibits any member of the Commission who is involved with the adjudicatory
46 function of the Commission in a particular matter from: (1) receiving any
47 investigatory or informational reports relating to the matter before a hearing; or (2)
48 being provided with any information beyond that which is provided to the judge
49 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:

1 **Section 1.** (Deleted by amendment.)

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

3 1.462 1. Proceedings before the Commission are civil matters
4 designed to preserve an independent and honorable judiciary.

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

9 **3. *In any matter before the Commission, the investigatory***
10 ***and prosecutorial function of the Commission, including, without***
11 ***limitation, deciding whether a formal statement of charges should***
12 ***be filed, must be separate from the adjudicatory function of the***
13 ***Commission, including, without limitation, hearing evidence,***
14 ***making factual findings and imposing discipline after a formal***
15 ***complaint of charges is filed. Any member of the Commission who***
16 ***is involved with the adjudicatory function of the Commission in a***
17 ***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.



