

ASSEMBLY BILL NO. 68—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the Commission on 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 a determination or finding by the Commission to be recorded in the minutes of the proceedings of the Commission in certain circumstances; revising the definition of the term “judge” for purposes of the jurisdiction of the Commission; requiring any complaint or action filed in connection with any proceeding of the Commission to be filed in the Supreme Court; revising provisions concerning the appointment of justices of the peace and municipal judges to sit on the Commission in certain circumstances; requiring appointing authorities to appoint one or more alternate members to serve on the Commission; revising the information the Commission is required to disclose if a witness before the Commission is prosecuted for perjury; revising provisions relating to the confidentiality of deliberative sessions and proceedings 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. (NRS 1.440) **Section 2.5** of this bill revises the definition of
- 4 the term “judge” to include a person who is a former justice, judge, justice of the
- 5 peace or other officer of the Judicial Branch who presides over judicial proceedings
- 6 if the conduct at issue occurred while the person was serving in any such position.



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7 Thus, under **section 2.5**, the Commission has jurisdiction over a former justice,
8 judge, justice of the peace or other judicial officer for conduct that occurred while
9 the person was serving in any such position. **Section 3** of this bill: (1) requires that
10 any complaint or action filed in connection with any proceeding of the Commission
11 be filed in the Supreme Court; (2) provides that any such complaint or action filed
12 in a court other than the Supreme Court will be presumed to be frivolous and
13 intended solely for the purposes of delay; and (3) requires the Supreme Court to
14 appoint two justices of the peace and two municipal judges to sit on the
15 Commission for formal, public proceedings against a justice of the peace or a
16 municipal judge, respectively. **Section 3.5** of this bill requires each appointing
17 authority to appoint, for each position for which the authority makes an
18 appointment to the Commission, one or more alternate members.

19 Existing law requires that all proceedings of the Commission remain
20 confidential until the Commission makes a determination that a reasonable
21 probability of grounds for disciplinary action against a judge exists and the special
22 counsel files a formal statement of charges. (NRS 1.4683) **Section 5** of this bill
23 instead requires that the existence of a proceeding of the Commission remain
24 confidential during such time. **Section 5** also revises the information that the
25 Commission is required to disclose if a witness is prosecuted for perjury committed
26 during the course of a proceeding before the Commission.

27 Existing law also requires that all deliberative sessions of the Commission
28 remain private. (NRS 1.4687) **Sections 6 and 7** of this bill require that any minutes
29 of such sessions remain confidential.

30 **Section 1** of this bill provides that, unless otherwise expressly provided by law,
31 a determination or finding by the Commission is required to be recorded in the
32 minutes of the proceedings of the Commission if the determination or finding is
33 made before: (1) the filing of a formal statement of charges against a judge; or (2)
34 the Commission decides to suspend a judge.

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

1 **Section 1.** Chapter 1 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *Except as otherwise expressly provided in this section and NRS*
4 *1.425 to 1.4695, inclusive, or any other applicable provision of*
5 *law, a determination or finding by the Commission must be*
6 *recorded in the minutes of the proceedings of the Commission if*
7 *the determination or finding is made before:*

- 8 1. *The filing of a formal statement of charges against a judge*
9 *pursuant to NRS 1.467; or*
- 10 2. *The Commission suspends a judge pursuant to*
11 *NRS 1.4675.*

12 **Sec. 2.** NRS 1.425 is hereby amended to read as follows:

13 1.425 As used in NRS 1.425 to 1.4695, inclusive, *and section*
14 *1 of this act*, unless the context otherwise requires, the words and
15 terms defined in NRS 1.4253 to 1.4296, inclusive, have the
16 meanings ascribed to them in those sections.



1 **Sec. 2.5.** NRS 1.428 is hereby amended to read as follows:

2 1.428 "Judge" means:

- 3 1. A justice of the Supreme Court;
- 4 2. A judge of the Court of Appeals;
- 5 3. A judge of the district court;
- 6 4. A judge of the municipal court;
- 7 5. A justice of the peace; ~~and~~

8 6. Any other officer of the Judicial Branch of this State,
9 whether or not the officer is an attorney, who presides over judicial
10 proceedings, including, but not limited to, a magistrate, court
11 commissioner, special master or referee ~~}; and~~

12 *7. Any person who formerly served in any of the positions*
13 *described in subsections 1 to 6, inclusive, if the conduct at issue*
14 *for purposes of NRS 1.425 to 1.4695, inclusive, occurred while the*
15 *person was serving in such a position.*

16 **Sec. 3.** NRS 1.440 is hereby amended to read as follows:

17 1.440 1. The Commission has exclusive jurisdiction over the
18 public censure, removal, involuntary retirement and other discipline
19 of judges which is coextensive with its jurisdiction over justices of
20 the Supreme Court and must be exercised in the same manner and
21 under the same rules.

22 2. *Any complaint or action, including, without limitation, an*
23 *interlocutory action or appeal, filed in connection with any*
24 *proceeding of the Commission must be filed in the Supreme Court.*
25 *Any such complaint or action filed in a court other than the*
26 *Supreme Court shall be presumed to be frivolous and intended*
27 *solely for the purposes of delay.*

28 3. The Supreme Court shall appoint two justices of the peace
29 ~~or~~ and two municipal judges to sit on the Commission for formal,
30 public proceedings against a justice of the peace or a municipal
31 judge, respectively. Justices of the peace and municipal judges so
32 appointed must be designated by an order of the Supreme Court to
33 sit for such proceedings in place of and to serve for the same terms
34 as the regular members of the Commission appointed by the
35 Supreme Court.

36 **Sec. 3.5.** NRS 1.445 is hereby amended to read as follows:

37 1.445 1. Each appointing authority shall appoint for each
38 position for which the authority makes an appointment to the
39 Commission ~~an~~ *one or more* alternate ~~member~~ *members*. The
40 Governor shall not appoint more than two alternate members of
41 the same political party. An alternate member must not be a member
42 of the Commission on Judicial Selection.

43 2. An alternate member shall serve:

44 (a) When the appointed member is disqualified or unable to
45 serve; or



1 (b) When a vacancy exists.

2 **Sec. 4.** (Deleted by amendment.)

3 **Sec. 5.** NRS 1.4683 is hereby amended to read as follows:

4 1.4683 1. Except as otherwise provided in this section and
5 NRS 1.4675 and 239.0115, ~~fall proceedings~~ *the existence of a*
6 *proceeding* of the Commission must remain confidential until the
7 Commission makes a determination pursuant to NRS 1.467 and the
8 special counsel files a formal statement of charges.

9 2. Except as otherwise provided in this section, before the
10 filing of a formal statement of charges, a present or former member
11 of the Commission, a present or former member of the staff of the
12 Commission or a present or former independent contractor retained
13 by the Commission shall not disclose information contained in a
14 complaint or any other information relating to the allegations of
15 misconduct or incapacity. Such persons:

16 (a) May disclose such information to persons directly involved
17 in the matter to the extent necessary for a proper investigation and
18 disposition of the complaint; and

19 (b) Shall conduct themselves in a manner that maintains the
20 confidentiality of the disciplinary proceeding.

21 3. Nothing in this section prohibits a person who files a
22 complaint with the Commission pursuant to NRS 1.4655, a judge
23 against whom such a complaint is made or a witness from disclosing
24 at any time the existence or substance of a complaint, investigation
25 or proceeding. The immunity provided by NRS 1.465 does not
26 apply to such a disclosure.

27 4. The confidentiality required pursuant to subsection 1 also
28 applies to all information and materials, written or oral, received or
29 developed by the Commission, its staff or any independent
30 contractors retained by the Commission in the course of its work
31 and relating to the alleged misconduct or incapacity of a judge.

32 5. The Commission shall disclose ~~†~~

33 ~~—(a) The report of a proceeding before the Commission; and~~

34 ~~—(b) All *all* testimony given and all materials filed in connection~~
35 ~~with *such* a proceeding ~~†~~~~

36 ~~→ *before the Commission* if a witness is prosecuted for perjury~~
37 ~~committed during the course of that proceeding.~~

38 6. Notwithstanding the provisions of this section to the
39 contrary, at any stage in a disciplinary proceeding, if the judge, a
40 third person or the person who filed a complaint with
41 the Commission pursuant to NRS 1.4655 has made the name of the
42 judge against whom such a complaint is made public, the
43 Commission may, at the request of the judge or on its own accord,
44 issue an explanatory statement to maintain confidence in the judicial



1 system and the Commission. In such a statement, the Commission
2 may:

- 3 (a) Confirm or deny that a complaint has been filed;
- 4 (b) Confirm or deny that the Commission is conducting an
5 investigation;
- 6 (c) Confirm that the Commission has dismissed a complaint
7 with or without a letter of caution; and
- 8 (d) Confirm that the Commission has entered into a deferred
9 discipline agreement with the judge.

10 7. In addition to the information authorized pursuant to
11 subsection 6, a statement issued by the Commission pursuant to
12 subsection 6 may correct any public misinformation concerning the
13 disciplinary proceeding, clarify the procedures of the Commission
14 relating to the disciplinary proceeding and explain that the judge has
15 a right to a fair investigation and, if applicable, a fair hearing
16 without prejudgment. The Commission shall submit such a
17 statement to the judge concerned for comments before the
18 Commission releases the statement. The Commission is not required
19 to incorporate any comments made by the judge in the statement and
20 may release the statement as originally drafted.

21 8. The Commission may, without disclosing the name of or any
22 details that may identify the judge involved, disclose the existence
23 of a proceeding before it to the State Board of Examiners and the
24 Interim Finance Committee to obtain additional money for its
25 operation from the Contingency Account established pursuant to
26 NRS 353.266.

27 9. No record of any medical examination, psychiatric
28 evaluation or other comparable professional record made for use in
29 an informal resolution pursuant to subsection 4 of NRS 1.4665 may
30 be made public at any time without the consent of the judge
31 concerned.

32 10. Notwithstanding the provisions of this section to the
33 contrary, at any stage in a disciplinary proceeding, the Commission
34 may release confidential information:

35 (a) To the appropriate law enforcement or prosecuting
36 authorities if the Commission determines that it has reliable
37 information which reveals possible criminal conduct by a judge ~~†~~
38 ~~former judge†~~ or any other person;

39 (b) Upon request to the Board of Governors of the State Bar of
40 Nevada or other appropriate disciplinary authorities of the State Bar
41 of Nevada if the Commission determines that it has reliable
42 information that reveals a possible violation of the *Nevada* Rules of
43 Professional Conduct by a judge ~~†, former judge†~~ or any other
44 attorney; or



1 (c) Pursuant to an order issued by a court of record of competent
2 jurisdiction in this State or a federal court of record of competent
3 jurisdiction.

4 11. Notwithstanding the provisions of this section to the
5 contrary, at any stage in a disciplinary proceeding, if a judge ~~for~~
6 ~~former judge~~ signs a waiver, the Commission may release
7 confidential information concerning any complaints filed with the
8 Commission pursuant to NRS 1.4655 that are pending or are closed
9 and did not result in a dismissal to:

10 (a) An agency authorized to investigate the qualifications of
11 persons for admission to practice law;

12 (b) An appointing or nominating authority or a state or federal
13 agency lawfully conducting investigations relating to the selection
14 or appointment of judges; or

15 (c) An agency conducting investigations relating to employment
16 with a governmental agency or other employment.

17 12. If the Commission discloses information concerning a
18 pending complaint to an agency or authority pursuant to subsection
19 11, the Commission shall subsequently disclose the disposition of
20 the complaint to the agency or authority. The Commission shall
21 send a copy of all information disclosed pursuant to subsection 11 to
22 the judge concerned at the same time the Commission sends the
23 information to the agency or authority.

24 **Sec. 6.** NRS 1.4687 is hereby amended to read as follows:

25 1.4687 1. Except as otherwise provided in subsection 2:

26 (a) Upon the filing of a formal statement of charges with the
27 Commission by the special counsel, the statement and other
28 documents later formally filed with the Commission must be made
29 accessible to the public, and hearings must be open.

30 (b) If a formal statement of charges has not been filed with the
31 Commission and the Commission holds a hearing to suspend a
32 judge pursuant to NRS 1.4675, any transcript of the hearing and any
33 documents offered as evidence at the hearing must be made
34 accessible to the public.

35 2. Regardless of whether any formal statement of charges has
36 been filed with the Commission, medical records and any other
37 documents or exhibits offered as evidence which are privileged
38 pursuant to chapter 49 of NRS must not be made accessible to the
39 public.

40 3. The Commission's deliberative sessions must remain private
41 ~~H~~ ***and any minutes of such sessions must remain confidential.***

42 4. The filing of a formal statement of charges does not justify
43 the Commission, its counsel, staff or independent contractors
44 retained by the Commission in making public any correspondence,
45 notes, work papers, interview reports or other evidentiary matter,



1 except at the formal hearing or with explicit consent of the judge
2 named in the complaint.

3 **Sec. 7.** NRS 239.010 is hereby amended to read as follows:

4 239.010 1. Except as otherwise provided in this section and
5 NRS 1.4683, **1.4687**, 1A.110, 49.095, 62D.420, 62D.440, 62E.516,
6 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160,
7 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,
8 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,
9 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,
10 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,
11 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130,
12 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057,
13 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245,
14 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801,
15 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450,
16 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662,
17 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140,
18 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
19 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350,
20 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300,
21 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
22 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
23 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140,
24 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350,
25 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025,
26 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135,
27 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070,
28 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205,
29 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,
30 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080,
31 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275,
32 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264,
33 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460,
34 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,
35 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320,
36 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175,
37 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534,
38 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195,
39 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570,
40 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610,
41 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555,
42 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403,
43 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536,
44 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040,
45 534A.031, 561.285, 571.160, 584.583, 584.655, 598.0964,



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1 598.0979, 598.098, 598A.110, 599B.090, 603.070, 603A.210,
2 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,
3 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265,
4 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133,
5 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125,
6 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185,
7 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089,
8 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400,
9 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191,
10 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625,
11 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225,
12 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320,
13 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065,
14 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133,
15 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340,
16 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190,
17 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280,
18 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110,
19 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117,
20 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196,
21 704B.320, 704B.325, 706.1725, 710.159, 711.600, sections 35, 38
22 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of
23 chapter 391, Statutes of Nevada 2013 and unless otherwise declared
24 by law to be confidential, all public books and public records of a
25 governmental entity must be open at all times during office hours to
26 inspection by any person, and may be fully copied or an abstract or
27 memorandum may be prepared from those public books and public
28 records. Any such copies, abstracts or memoranda may be used to
29 supply the general public with copies, abstracts or memoranda of the
30 records or may be used in any other way to the advantage of the
31 governmental entity or of the general public. This section does not
32 supersede or in any manner affect the federal laws governing
33 copyrights or enlarge, diminish or affect in any other manner the
34 rights of a person in any written book or record which is
35 copyrighted pursuant to federal law.

36 2. A governmental entity may not reject a book or record
37 which is copyrighted solely because it is copyrighted.

38 3. A governmental entity that has legal custody or control of a
39 public book or record shall not deny a request made pursuant to
40 subsection 1 to inspect or copy or receive a copy of a public book or
41 record on the basis that the requested public book or record contains
42 information that is confidential if the governmental entity can
43 redact, delete, conceal or separate the confidential information from
44 the information included in the public book or record that is not
45 otherwise confidential.



1 4. A person may request a copy of a public record in any
2 medium in which the public record is readily available. An officer,
3 employee or agent of a governmental entity who has legal custody
4 or control of a public record:

5 (a) Shall not refuse to provide a copy of that public record in a
6 readily available medium because the officer, employee or agent has
7 already prepared or would prefer to provide the copy in a different
8 medium.

9 (b) Except as otherwise provided in NRS 239.030, shall, upon
10 request, prepare the copy of the public record and shall not require
11 the person who has requested the copy to prepare the copy himself
12 or herself.

13 **Sec. 8.** This act becomes effective on July 1, 2015.

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