
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; providing that no court in this State other than the Supreme Court may exercise jurisdiction over a complaint or action filed in connection with any proceeding of the Commission; authorizing the Commission to collect attorney’s fees and costs from a person who files such a complaint or action in a court lacking jurisdiction; revising provisions governing the examination of complaints received by 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 3** of this bill: (1) provides that no court in
4 this State other than the Supreme Court may exercise jurisdiction over a complaint
5 or action filed in connection with any proceeding of the Commission; (2) authorizes
6 the Commission to require a person who files such a complaint or action in a court
7 that lacks jurisdiction to pay the attorney’s fees and costs incurred by the
8 Commission in connection with the complaint or action; and (3) requires that any
9 such attorney’s fees and costs collected by the Commission be deposited in the
10 State General Fund.



11 Existing law requires the Commission to examine each complaint it receives to
12 determine whether the complaint alleges objectively verifiable evidence from
13 which a reasonable inference could be drawn that a judge committed misconduct or
14 is incapacitated. (NRS 1.4657) **Section 4** of this bill requires the Commission or its
15 staff to examine each complaint the Commission receives and, based on that
16 examination, the Commission shall then make such a determination.

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

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

28 **Section 1** of this bill provides that a determination or finding by the
29 Commission is not required to be in writing unless otherwise expressly provided by
30 law.

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 is not required*
6 *to be in writing.*

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

8 1.425 As used in NRS 1.425 to 1.4695, inclusive, *and section*
9 *1 of this act*, unless the context otherwise requires, the words and
10 terms defined in NRS 1.4253 to 1.4296, inclusive, have the
11 meanings ascribed to them in those sections.

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

13 1.440 1. The Commission has exclusive jurisdiction over the
14 public censure, removal, involuntary retirement and other discipline
15 of judges which is coextensive with its jurisdiction over justices of
16 the Supreme Court and must be exercised in the same manner and
17 under the same rules.

18 2. *No court in this State other than the Supreme Court may*
19 *exercise jurisdiction over a complaint or action, including, without*
20 *limitation, an interlocutory action or appeal, filed in connection*
21 *with any proceeding of the Commission. Any such complaint or*
22 *action filed in a court other than the Supreme Court shall be*
23 *deemed to be frivolous and intended solely for the purposes of*
24 *delay. The Commission may require a person who files such a*



1 *complaint or action in a court other than the Supreme Court to*
2 *pay the attorney's fees and costs incurred by the Commission in*
3 *connection with the complaint or action. Any such attorney's fees*
4 *and costs collected by the Commission must be deposited in the*
5 *State General Fund.*

6 3. The Supreme Court shall appoint two justices of the peace or
7 two municipal judges to sit on the Commission for formal, public
8 proceedings against a justice of the peace or a municipal judge,
9 respectively. Justices of the peace and municipal judges so
10 appointed must be designated by an order of the Supreme Court to
11 sit for such proceedings in place of and to serve for the same terms
12 as the regular members of the Commission appointed by the
13 Supreme Court.

14 **Sec. 4.** NRS 1.4657 is hereby amended to read as follows:

15 1.4657 1. The Commission *or its staff* shall, in accordance
16 with ~~its~~ *the* procedural rules ~~of~~ *of the Commission*, examine each
17 complaint that ~~the~~ *the Commission* receives ~~to~~ *and, based on that*
18 *examination, the Commission shall* determine whether the
19 complaint alleges objectively verifiable evidence from which a
20 reasonable inference could be drawn that a judge committed
21 misconduct or is incapacitated.

22 2. If the Commission determines that a complaint does not
23 contain such allegations, the Commission shall dismiss the
24 complaint with or without a letter of caution. A letter of caution is
25 not a form of discipline. The Commission may consider a letter of
26 caution when deciding the appropriate action to be taken on a
27 subsequent complaint against a judge unless the letter of caution is
28 not relevant to the misconduct alleged in the subsequent complaint.

29 3. If the Commission determines that a complaint does contain
30 such allegations, the Commission shall authorize further
31 investigation.

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

33 1.4683 1. Except as otherwise provided in this section and
34 NRS 1.4675 and 239.0115, ~~all proceedings~~ *the existence of a*
35 *proceeding* of the Commission must remain confidential until the
36 Commission makes a determination pursuant to NRS 1.467 and the
37 special counsel files a formal statement of charges.

38 2. Except as otherwise provided in this section, before the
39 filing of a formal statement of charges, a present or former member
40 of the Commission, a present or former member of the staff of the
41 Commission or a present or former independent contractor retained
42 by the Commission shall not disclose information contained in a
43 complaint or any other information relating to the allegations of
44 misconduct or incapacity. Such persons:



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

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

6 3. Nothing in this section prohibits a person who files a
7 complaint with the Commission pursuant to NRS 1.4655, a judge
8 against whom such a complaint is made or a witness from disclosing
9 at any time the existence or substance of a complaint, investigation
10 or proceeding. The immunity provided by NRS 1.465 does not
11 apply to such a disclosure.

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

17 5. The Commission shall disclose ~~f~~:

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

19 ~~—(b) All] all~~ testimony given and all materials filed in connection
20 with ~~[such]~~ a proceeding ~~f~~;

21 ~~→] before the Commission~~ if a witness is prosecuted for perjury
22 committed during the course of that proceeding.

23 6. Notwithstanding the provisions of this section to the
24 contrary, at any stage in a disciplinary proceeding, if the judge, a
25 third person or the person who filed a complaint with
26 the Commission pursuant to NRS 1.4655 has made the name of the
27 judge against whom such a complaint is made public, the
28 Commission may, at the request of the judge or on its own accord,
29 issue an explanatory statement to maintain confidence in the judicial
30 system and the Commission. In such a statement, the Commission
31 may:

32 (a) Confirm or deny that a complaint has been filed;

33 (b) Confirm or deny that the Commission is conducting an
34 investigation;

35 (c) Confirm that the Commission has dismissed a complaint
36 with or without a letter of caution; and

37 (d) Confirm that the Commission has entered into a deferred
38 discipline agreement with the judge.

39 7. In addition to the information authorized pursuant to
40 subsection 6, a statement issued by the Commission pursuant to
41 subsection 6 may correct any public misinformation concerning the
42 disciplinary proceeding, clarify the procedures of the Commission
43 relating to the disciplinary proceeding and explain that the judge has
44 a right to a fair investigation and, if applicable, a fair hearing
45 without prejudgment. The Commission shall submit such a



1 statement to the judge concerned for comments before the
2 Commission releases the statement. The Commission is not required
3 to incorporate any comments made by the judge in the statement and
4 may release the statement as originally drafted.

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

11 9. No record of any medical examination, psychiatric
12 evaluation or other comparable professional record made for use in
13 an informal resolution pursuant to subsection 4 of NRS 1.4665 may
14 be made public at any time without the consent of the judge
15 concerned.

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

19 (a) To the appropriate law enforcement or prosecuting
20 authorities if the Commission determines that it has reliable
21 information which reveals possible criminal conduct by a judge,
22 former judge or any other person;

23 (b) Upon request to the Board of Governors of the State Bar of
24 Nevada or other appropriate disciplinary authorities of the State Bar
25 of Nevada if the Commission determines that it has reliable
26 information that reveals a possible violation of the *Nevada* Rules of
27 Professional Conduct by a judge, former judge or any other
28 attorney; or

29 (c) Pursuant to an order issued by a court of record of competent
30 jurisdiction in this State or a federal court of record of competent
31 jurisdiction.

32 11. Notwithstanding the provisions of this section to the
33 contrary, at any stage in a disciplinary proceeding, if a judge or
34 former judge signs a waiver, the Commission may release
35 confidential information concerning any complaints filed with the
36 Commission pursuant to NRS 1.4655 that are pending or are closed
37 and did not result in a dismissal to:

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

40 (b) An appointing or nominating authority or a state or federal
41 agency lawfully conducting investigations relating to the selection
42 or appointment of judges; or

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



1 12. If the Commission discloses information concerning a
2 pending complaint to an agency or authority pursuant to subsection
3 11, the Commission shall subsequently disclose the disposition of
4 the complaint to the agency or authority. The Commission shall
5 send a copy of all information disclosed pursuant to subsection 11 to
6 the judge *or former judge* concerned at the same time the
7 Commission sends the information to the agency or authority.

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

9 1.4687 1. Except as otherwise provided in subsection 2:

10 (a) Upon the filing of a formal statement of charges with the
11 Commission by the special counsel, the statement and other
12 documents later formally filed with the Commission must be made
13 accessible to the public, and hearings must be open.

14 (b) If a formal statement of charges has not been filed with the
15 Commission and the Commission holds a hearing to suspend a
16 judge pursuant to NRS 1.4675, any transcript of the hearing and any
17 documents offered as evidence at the hearing must be made
18 accessible to the public.

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

24 3. The Commission's deliberative sessions must remain private
25 *and any minutes of such sessions must remain confidential.*

26 4. The filing of a formal statement of charges does not justify
27 the Commission, its counsel, staff or independent contractors
28 retained by the Commission in making public any correspondence,
29 notes, work papers, interview reports or other evidentiary matter,
30 except at the formal hearing or with explicit consent of the judge
31 named in the complaint.

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

33 239.010 1. Except as otherwise provided in this section and
34 NRS 1.4683, *1.4687*, 1A.110, 49.095, 62D.420, 62D.440, 62E.516,
35 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160,
36 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,
37 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,
38 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,
39 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,
40 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130,
41 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057,
42 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245,
43 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801,
44 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450,
45 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662,



1 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140,
2 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
3 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350,
4 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300,
5 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
6 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
7 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140,
8 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350,
9 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025,
10 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135,
11 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070,
12 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205,
13 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,
14 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080,
15 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275,
16 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264,
17 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460,
18 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,
19 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320,
20 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175,
21 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534,
22 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195,
23 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570,
24 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610,
25 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555,
26 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403,
27 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536,
28 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040,
29 534A.031, 561.285, 571.160, 584.583, 584.655, 598.0964,
30 598.0979, 598.098, 598A.110, 599B.090, 603.070, 603A.210,
31 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,
32 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265,
33 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133,
34 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125,
35 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185,
36 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089,
37 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400,
38 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191,
39 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625,
40 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225,
41 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320,
42 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065,
43 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133,
44 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340,
45 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190,



1 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280,
2 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110,
3 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117,
4 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196,
5 704B.320, 704B.325, 706.1725, 710.159, 711.600, sections 35, 38
6 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of
7 chapter 391, Statutes of Nevada 2013 and unless otherwise declared
8 by law to be confidential, all public books and public records of a
9 governmental entity must be open at all times during office hours to
10 inspection by any person, and may be fully copied or an abstract or
11 memorandum may be prepared from those public books and public
12 records. Any such copies, abstracts or memoranda may be used to
13 supply the general public with copies, abstracts or memoranda of the
14 records or may be used in any other way to the advantage of the
15 governmental entity or of the general public. This section does not
16 supersede or in any manner affect the federal laws governing
17 copyrights or enlarge, diminish or affect in any other manner the
18 rights of a person in any written book or record which is
19 copyrighted pursuant to federal law.

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

22 3. A governmental entity that has legal custody or control of a
23 public book or record shall not deny a request made pursuant to
24 subsection 1 to inspect or copy or receive a copy of a public book or
25 record on the basis that the requested public book or record contains
26 information that is confidential if the governmental entity can
27 redact, delete, conceal or separate the confidential information from
28 the information included in the public book or record that is not
29 otherwise confidential.

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

34 (a) Shall not refuse to provide a copy of that public record in a
35 readily available medium because the officer, employee or agent has
36 already prepared or would prefer to provide the copy in a different
37 medium.

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

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

