

ASSEMBLY BILL NO. 28—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the Commission on Judicial Discipline. (BDR 1-395)

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; authorizing the Commission to order a justice of the peace or municipal judge to forfeit his or her office for failure to attend certain required instruction; establishing procedures for the Commission to order such a forfeiture of office; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes the Commission on Judicial Discipline to discipline a
2 judge under certain circumstances. (NRS 1.4653) Existing law also requires a
3 newly elected or appointed justice of the peace or municipal judge to attend certain
4 mandatory instruction unless he or she secures a written order excusing his or her
5 attendance from a judge of the district court of the county where the justice or the
6 judge serves and files this order with the Court Administrator. If a newly elected or
7 appointed justice of the peace or municipal judge fails to attend the required
8 instruction or fails to secure and properly file a written order excusing his or her
9 attendance, he or she is required to forfeit his or her office. (NRS 4.036, 5.026)

10 **Section 4** of this bill authorizes the Commission to order a justice of the peace
11 or municipal judge to forfeit his or her office if he or she fails to attend the required
12 instruction without a reasonable excuse. **Section 1** of this bill requires the
13 Commission to give a justice of the peace or a municipal judge 30 days’ notice and
14 an opportunity to respond and to hold a public hearing before the Commission
15 orders the justice of the peace or municipal judge to forfeit his or her office.



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 1. *If the Commission reasonably believes that a justice of the*
4 *peace or municipal judge failed to attend the instruction required*
5 *pursuant to NRS 4.036 or 5.026, as applicable, without a*
6 *reasonable excuse, the Commission shall give the justice of the*
7 *peace or the municipal judge:*

8 (a) *Thirty days' notice of its intention to order the justice of the*
9 *peace or municipal judge to forfeit his or her office pursuant to*
10 *this section; and*

11 (b) *An opportunity to respond.*

12 2. *The Commission shall hold a public hearing before*
13 *ordering the justice of the peace or municipal judge to forfeit his*
14 *or her office, unless the justice of the peace or municipal judge*
15 *waives the right to the hearing. The decision of the Commission*
16 *must be made public.*

17 3. *A justice of the peace or municipal judge ordered to forfeit*
18 *his or her office pursuant to this section may appeal the order to*
19 *the appellate court of competent jurisdiction pursuant to the rules*
20 *fixed by the Supreme Court pursuant to Section 4 of Article 6 of*
21 *the Nevada Constitution. If a justice of the peace or a municipal*
22 *judge appeals such an order to forfeit his or her office:*

23 (a) *The standard of review for such an appeal is an abuse of*
24 *discretion standard; and*

25 (b) *The proceedings held at the appellate court of competent*
26 *jurisdiction pursuant to the rules fixed by the Supreme Court*
27 *concerning the order to forfeit office must be open to the public.*

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

29 1.425 As used in NRS 1.425 to 1.4695, inclusive, *and section*
30 *1 of this act*, unless the context otherwise requires, the words and
31 terms defined in NRS 1.4253 to 1.4296, inclusive, have the
32 meanings ascribed to them in those sections.

33 **Sec. 3.** NRS 1.465 is hereby amended to read as follows:

34 1.465 1. The following persons are absolutely immune from
35 suit for all conduct at any time in the course of their official duties:

36 (a) Any member who serves on the Commission;

37 (b) Any person employed by the Commission;

38 (c) Any independent contractor of the Commission; and

39 (d) Any person who performs services pursuant to NRS 1.450 or
40 1.460 for the Commission.

41 2. Except as otherwise provided in NRS 1.4683, the following
42 persons are absolutely immune from suit unless convicted of



1 committing perjury before the Commission pursuant to NRS
2 199.120 to 199.200, inclusive:

3 (a) A person who files a complaint with the Commission
4 pursuant to NRS 1.4655;

5 (b) A person who gives testimony at a hearing held by the
6 Commission pursuant to NRS 1.4673 or 1.4675 ~~§~~ *or section 1 of*
7 *this act*; and

8 (c) A person who gives a statement to an investigator of the
9 Commission during an authorized investigation.

10 **Sec. 4.** NRS 1.4653 is hereby amended to read as follows:

11 1.4653 1. The Commission may remove a judge, publicly
12 censure a judge or impose other forms of discipline on a judge if the
13 Commission determines that the judge:

14 (a) Has committed willful misconduct;

15 (b) Has willfully or persistently failed to perform the duties of
16 office; or

17 (c) Is habitually intemperate.

18 2. The Commission may publicly censure a judge or impose
19 other forms of discipline on a judge if the Commission determines
20 that the judge has violated one or more of the provisions of the
21 Nevada Code of Judicial Conduct in a manner that is not knowing or
22 deliberate.

23 3. The Commission may retire a judge if the Commission
24 determines that:

25 (a) The advanced age of the judge interferes with the proper
26 performance of judicial duties; or

27 (b) The judge suffers from a mental or physical disability that
28 prevents the proper performance of judicial duties and is likely to be
29 permanent in nature.

30 4. *The Commission may order a justice of the peace or a*
31 *municipal judge to forfeit his or her office if he or she fails to*
32 *attend the instruction required pursuant to NRS 4.036 or 5.026, as*
33 *applicable, unless the Commission finds that there was a*
34 *reasonable excuse for the failure to attend the instruction.*

35 5. As used in this section:

36 (a) "Habitually intemperate" means the chronic, excessive use of
37 alcohol or another substance that affects mental processes,
38 awareness or judgment.

39 (b) "Willful misconduct" includes:

40 (1) Conviction of any crime involving moral turpitude;

41 (2) A knowing or deliberate violation of one or more of the
42 provisions of the Nevada Code of Judicial Conduct; and

43 (3) A knowing or deliberate act or omission in the
44 performance of judicial or administrative duties that:



1 (I) Involves fraud or bad faith or amounts to a public
2 offense; and

3 (II) Tends to corrupt or impair the administration of
4 justice in a judicial proceeding.

5 ➔ The term does not include claims of error or abuse of discretion
6 in findings of fact, legal decisions or procedural rulings unless
7 supported by evidence of abuse of authority, a disregard for
8 fundamental rights, an intentional disregard of the law, a pattern of
9 legal error or an action taken for a purpose other than the faithful
10 discharge of judicial duty.

11 **Sec. 5.** NRS 1.4656 is hereby amended to read as follows:

12 1.4656 Except as otherwise expressly provided in NRS 1.425
13 to 1.4695, inclusive, *and section 1 of this act* or any other
14 applicable provision of law, a determination or finding by the
15 Commission must be recorded in the minutes of the proceedings of
16 the Commission if the determination or finding is made before:

17 1. The filing of a formal statement of charges against a judge
18 pursuant to NRS 1.467; ~~for~~

19 2. The Commission suspends a judge pursuant to NRS 1.4675
20 ~~for~~; *or*

21 *3. The Commission orders a justice of the peace or municipal*
22 *judge to forfeit his or her office pursuant to section 1 of this act.*

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

24 1.4687 1. Except as otherwise provided in subsection 2:

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

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

34 *(c) If the Commission holds a hearing to order a justice of the*
35 *peace or municipal judge to forfeit his or her office pursuant to*
36 *section 1 of this act, any transcript of the hearing and any*
37 *documents offered as evidence at the hearing must be made*
38 *accessible to the public.*

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

44 3. The Commission's deliberative sessions must remain private
45 and any minutes of such sessions must remain confidential.



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

7 **Sec. 6.3.** NRS 4.036 is hereby amended to read as follows:

8 4.036 1. Each justice of the peace who is first elected or
9 appointed to office after July 1, 1971, shall attend the instruction
10 provided pursuant to NRS 4.035, on the first occasion when such
11 instruction is offered after the election or appointment of the justice
12 of the peace, unless excused by written order of a judge of the
13 district court in and for his or her county, which shall be filed with
14 the Court Administrator. Such order is final for all purposes.

15 2. If a justice of the peace fails to attend such instruction
16 without securing a written order pursuant to subsection 1, the justice
17 of the peace forfeits his or her office **† unless the Commission on**
18 **Judicial Discipline finds pursuant to section 1 of this act that there**
19 **was a reasonable excuse for the failure to attend such instruction.**

20 **Sec. 6.7.** NRS 5.026 is hereby amended to read as follows:

21 5.026 1. Each municipal judge who is first elected or
22 appointed to office after July 1, 1971, shall attend the instruction
23 provided pursuant to NRS 5.025, on the first occasion when such
24 instruction is offered after the election or appointment of the
25 municipal judge, unless excused by written order of a judge of the
26 district court in and for the county where the city is situated, which
27 must be filed with the Court Administrator. Such an order is final
28 for all purposes.

29 2. If a municipal judge fails to attend such instruction without
30 securing a written order pursuant to subsection 1, the municipal
31 judge forfeits his or her office **† unless the Commission on**
32 **Judicial Discipline finds pursuant to section 1 of this act that there**
33 **was a reasonable excuse for the failure to attend such instruction.**

34 **Sec. 7.** This act becomes effective upon passage and approval.

