

MINUTES OF THE  
MEETING OF THE SENATE COMMITTEE  
ON JUDICIARY

SIXTY-FIRST SESSION  
NEVADA STATE LEGISLATURE  
April 8, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:30 a.m., Wednesday, April 8, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman  
Senator Keith Ashworth, Vice Chairman  
Senator Don W. Ashworth  
Senator Jean E. Ford  
Senator William J. Raggio  
Senator William H. Hernstadt  
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Sally Boyes, Committee Secretary

Chairman Close noted due to the lack of time on the committee meeting of April 7, 1981, this meeting is a continuation of that same meeting.

ASSEMBLY JOINT RESOLUTION 14:

Proposes constitutional amendment to provide that records and proceedings of commission on judicial discipline are open to public.

Arthur Crookshank, Common Cause, stated after studying the bill further, he sees two sides to this bill. One side being the portion of the bill that speaks of contents being revealed in a hearing. His feeling was that all that had to be done was for a commission not to call a hearing and the information that would be coming into the commission then dies there and the public never gets it. The other portion of the bill states that when the commission orders a hearing, records made at that time or after, or all subsequent proceedings, are open to the public.

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Mr. Crookshank stated his feeling was in agreement but felt there may be a possibility a commission would close off some information. He feels open meetings are a means of informing the public.

Senator Raggio stated there should be some investigation to determine whether the accusations have merit before there is a public hearing.

Senator Wagner asked about the contents of a complaint being revealed in a hearing. Mr. Guy Shipler replied that had applied to only one out of 69 complaints. He further stated that many of the complaints were frivolous and further investigation was not warranted. His personal opinion was the charges could be investigated without identifying the judge in question. This would serve as a protection for the person involved.

Mr. Shipler stated that only one case went to a hearing. The other charges, after being investigated, did not have sufficient evidence to support the charge. In some cases, the municipals or justice of the peace officials either resigned or did not run for re-election.

Senator Ford stated a report should be issued in regard to charges brought against judges. Mr. Shipler stated a report was made and sent to newspapers and wire services but was not used. The public statement that was issued is attached hereto as Exhibit C.

Chairman Close stated some of the complaints were not open as they were investigations and not hearings.

Mr. Bob Ritter stated the image of the judiciary system is very low. He stated this type of secrecy leads to a creditability problem.

Ms Dorothy Kosich of the Society of Professional Journalists stated the society supports keeping the records and hearings open.

The following Bill Drafting Requests were presented and received for committee introduction:

BDR 2-1313 (Trial Lawyers) (SB. 520)

Sets time limit for bringing certain actions for malpractice and reduces time limit for certain other actions.

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BDR 1-1316 (Trial Lawyers) (S.B. 519)

Increases and speeds compensation of attorneys representing indigents.

The following Bill Drafting Requests were rejected for committee introduction:

BDR 4-16-1272 (Trial Lawyers)

BDR 2-1312 (Trial Lawyers)

There being no further business, the meeting was adjourned at 9:00 a.m.

Respectfully submitted by:

Sally Boyes  
Sally Boyes, Secretary

APPROVED BY:

Mel. D. Close, Jr.  
Senator Melvin D. Close, Jr., Chairman

DATED April 21, 1981

## Exhibit A

**THIS EXHIBIT IS MISSING FROM BOTH THE ORIGINAL  
MINUTES AND THE MICROFICHE.**

SENATE COMMITTEE ON JUDICIARY

EXHIBIT B

DATE: April 8, 1981

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Dorothy Kosich	Society of Professional Journalists	882-2111

**FILED**  
FEB 9 1981  
IN THE SUPREME COURT OF THE STATE OF NEVADA  
CLERK OF COURT  
*[Signature]*

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the Amendment )  
of the Revised Interim Rules )  
of the Nevada Commission on )  
Judicial Discipline. )

ADKT. 38

PETITION

William P. Bako, Judge of the Fifth Judicial District Court of the State of Nevada, hereby petitions the Court to amend the Revised Interim Procedural Rules of the Nevada Commission on Judicial Discipline, as follows:

1. Petitioner has heretofore invited this Court's attention to possible amendments in the Revised Interim Procedural Rules of the Nevada Commission on Judicial Discipline, which this Court promulgated on January 10, 1978, in compliance with Art. 6, § 21(5)(a) and Art. 6, § 21(5)(c) of the Nevada Constitution.

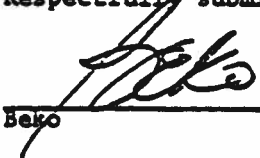
2. In addition, it appears that other amendments may well be necessary or appropriate.

3. This Court promulgated the Revised Interim Procedural Rules of the Nevada Commission on Judicial Discipline, on an experimental basis, in order to provide procedural guidelines for the said Commission, until this Court could gain sufficient knowledge and experience to formulate procedural rules in final form.

4. Petitioner submits that sufficient experience has now been had by this Court and others who have worked with such rules, or who have observed the performance of said Commission as regulated thereby, to afford a basis for evaluating the Interim Rules and the performance of the Nevada Commission on Judicial Discipline as thereby regulated.

WHEREFORE, petitioner prays that this Court now proceed to review the aforesaid Revised Interim Procedural Rules in their entirety; that such rules be amended in all regards as may appear necessary or desirable; and that final procedural rules be adopted and published in regard to the conduct of the Commission's investigations and hearings.

Respectfully submitted,

  
Beto \_\_\_\_\_, D.J.

REPORT ON ACTIVITIES OF THE  
NEVADA COMMISSION ON JUDICIAL DISCIPLINE

December, 1980

Since its organizational meeting on February 5, 1977, the seven-member Commission has held 30 meetings, at which it has evaluated a total of 69 complaints relating to the fitness of supreme court justices, district judges, municipal judges and justices of the peace. Of these complaints, sixteen were handled at the first six meetings of the Commission. Their disposition was detailed in the first public report of activities issued in May 1978.

Of the 53 complaints formally made to the Commission since then, eight were pending as of the end of November, 1980. Following initial screening and preliminary investigation, 26 of the complaints were dismissed as frivolous, lacking supporting evidence, or outside Commission jurisdiction. Another 13 were filed for future reference, or put into a "holding pattern" pending possible future developments or new evidence. Concurrent with the Commission's action, four cases became moot by virtue of removal by local government, resignation, or expiration of term of office. And, since the 1978 report, five judges have been exonerated from charges following thorough investigation or hearings.

Investigation of members of the Nevada Supreme Court who had been accused of unethical conduct or criminal activity took about two years, and required the hiring of specialists. As a result of this effort, the Commission exonerated three justices after a four-day hearing (see public statement, which follows). The exonerations were based on a lack of credible evidence which would allow the Commission to take any of the three actions its powers permit.

Under the constitutional amendment which created the Commission, and the rules adopted by the state supreme court and under which it must presently operate, the three actions the Commission is empowered to take are:

- (1) censure a judge for violation of the Nevada Code of Judicial Conduct;
- (2) remove a judge for willful misconduct, for willful or persistent failure to perform the duties of office, or for habitual intemperance; and



- (3) retire a judge for advanced age which interferes with the proper performance of judicial duties, or for mental or physical disability preventing the proper performance of judicial duties and likely to be permanent in nature.

The Nevada Constitution sets down the causes for removal and retirement (Article 6, Section 21, subsection 6(a) and (b)). The causes for censure were established by the Supreme Court.

The Supreme Court adopted the Revised Interim Procedural Rules of the Nevada Commission on Judicial Discipline on January 10, 1978. These rules describe the scope of the Commission's work, and the procedures to be followed in receiving and investigating complaints against Nevada jurists.

The most controversial aspect of the rules, from the public's point of view, has been the confidentiality required in virtually all of the Commission's activities. Strict privacy must be maintained about receipt of complaints and investigations. Even when the Commission exonerates a jurist, that action can be made public only if the jurist requests it or gives permission. The only actions the Commission is allowed to make public on its own are its decisions to censure, retire or remove a jurist.

In the case of the Supreme Court investigations, these limitations were violated through leaks to the news media by unknown sources. Although most of the information published as a result was false, exaggerated or imaginary, neither the accused justices nor the Commission itself could make any public correction without violating the requirement of confidentiality, and each member's oath to uphold it. The net effect was to put all parties in the inequitable position of being unable publicly to offset misstatements or blatant misinterpretations of fact which had been published. This did serious and unjustified harm both to the reputations of the accused and to the belief of the public in the integrity of the Commission. Since the ideal situation of complete confidentiality is evidently impossible to maintain, the Commission is considering offering suggestions that at least its formal hearings be made public so as to prevent such unwarranted consequences as resulted from the Supreme Court hearings in June of 1980. (see public statement).

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The composition of the seven-member Commission is designed to provide as broad a base as possible of viewpoints and expertise to its deliberations and actions, to help assure fairness and balance. Thus: Two members are judges appointed by the Supreme Court; two members are attorneys, appointed by the Board of Governors of the Nevada State Bar; and three members are lay persons, all appointed by the Governor. (An alternate judge and alternate lawyer are chosen to sit on certain cases when regular members may be disqualified). All commissioners are appointed for four-year terms, but the terms are staggered to provide both continuity and change. The officers--chairman and vice chairman--must be selected from the three lay members.

Anyone may bring any matter relating to the fitness of a jurist to the Commission. Its seven members, through its secretary, conduct an initial screening. The Commission may then reject the matter or order a preliminary investigation by an attorney or an investigator. After the preliminary investigation, the Commission must either dismiss the matter, file for future reference or order a hearing. Should a justice of the Supreme Court be the subject of a complaint, the Commission secretary would not conduct the screening or attend Commission conferences on the matter; because the secretary is employed by the court, his participation could be construed as a conflict of interest.

The Commission may suspend a jurist from the exercise of office while the matter before it is being resolved.

A jurist may appeal from the action of the Commission to the Supreme Court. The Supreme Court may reverse the action of the Commission, or it may take any of the alternative actions (censure, retirement or removal).

An action for removal by the Commission does not exempt a judge from the possibility of indictment and punishment according to law if a crime has been committed.

The Commission may employ attorneys to act as counsel to conduct hearings or proceedings before the Commission, summon witnesses to appear and testify under oath, compel the production of books, papers, documents and records, and grant immunity from prosecution or punishment when the Commission deems it necessary and proper.

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The Commission does not consider complaints concerning legal errors alleged to have been made by a judge. Such matters are subject to judicial review--on appeal or in other appropriate legal proceedings--and are outside the jurisdiction of the Commission.

As noted earlier, it was impossible for either the Commission or its members at the time of the Supreme Court hearings to respond to the inaccurate reports from news leaks regarding those hearings. However, because of further subsequent publicity that came from breaches of confidentiality over which the Commission had no control, the Commission itself agreed that it was imperative for the hearing officer, Judge William Beko, an alternate member, to compose a formal public statement. It was felt that to do less would be for the Commission to do a disservice to the public trust and responsibility.

Because of its official nature, that statement is made a part of this public report and follows herewith:

1 A PUBLIC STATEMENT

2 Because of an inordinate amount of publicity given to  
3 hearings recently concluded by the Nevada Commission on Judicial  
4 Discipline, fairness and justice mandate a public statement to  
5 clarify some of the issues raised and to correct erroneous  
6 allegations contained in media reports.

7 The Commission on Judicial Discipline is a creature  
8 of the Nevada Constitution. It consists of seven regular  
9 members, i. e., two judges or justices appointed by the supreme  
10 court, two members of the State Bar of Nevada appointed by its  
11 board of governors, and three persons, not members of the legal  
12 profession, appointed by the governor. Its chairman must be one  
13 of the lay members.

14 The Commission, for good cause, has the authority to  
15 censure, retire or remove a judge or justice, subject to the  
16 power vested in the supreme court to reverse such action or to  
17 take alternative action.

18 Secrecy of the Proceedings.

19 The Commission has been criticized because all of its  
20 proceedings have been conducted in secrecy. The Nevada  
21 Constitution mandates the Supreme Court of Nevada to make  
22 appropriate rules for the confidentiality of all proceedings  
23 before the Commission, except a decision to censure, retire or  
24 remove a judge or justice.

25 Even where a judge has been investigated, and  
26 exonerated, no public disclosure of such action may be, or has  
27 been, made without the consent of the accused.

28 The disclosure that a judge has been the subject of a  
29 disciplinary investigation clearly has a severe adverse impact  
30 not only on his personal life but his official performance. The

[REDACTED]

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1 judiciary, more so than the other branches of government, relies  
2 primarily on the reputation of its members for its effectiveness.  
3 In the final analysis, the judiciary's authority and the general  
4 compliance with its decisions depends on the integrity of the  
5 judges and the public's perception of that integrity. This  
6 fundamental asset is placed in jeopardy when information is  
7 released that a judge has been subjected to an investigation  
8 however unfounded the particular complaint may ultimately turn  
9 out. If the charges are finally determined to have merit, then  
10 a judge, like other private citizens or public officials, is not  
11 entitled to have his violation of law or judicial canon or other  
12 misdeed shielded from public view. No public service or benefit  
13 is served by the disclosure of charges adjudged to have no  
14 foundation in fact.

15 The members of the Commission have endeavored to the  
16 best of their ability to comply with this constitutional  
17 limitation on public access. Many complaints have been found to  
18 be libelous, scurrilous and completely unfounded. Experience has  
19 also shown that some persons, despite the confidentiality  
20 provision, abuse the entire process by filing a complaint with  
21 the Commission and then deliberately but surreptitiously leak  
22 its contents to a member of the media.

23 The confidentiality clause is not without disadvantage  
24 as was borne out by the recent hearings involving members of the  
25 Supreme Court. If the secrecy requirement could have been  
26 waived by the accused justices, I am confident that without  
27 exception each would have welcomed a public hearing, complete  
28 with television coverage. In this manner, the public would have  
29 had an opportunity to observe and hear for themselves the  
30 charges and the evidence, or lack of the same, that led to the

1 ultimate dismissals of all charges.

2 In this regard, I intend to petition the Supreme Court  
3 for a rule change to permit such hearings to be opened to the  
4 public at the request of, or with the consent of, the accused.

5 Conduct of the Hearings.

6 All of the hearings were conducted in accordance with  
7 the rules of the Commission and the law of Nevada. After care-  
8 fully considering all of the evidence and the arguments of  
9 counsel, all of the justices were exonerated of the charges  
10 filed against them. In this regard, it has been widely public-  
11 ized that certain witnesses were prevented from testifying in  
12 these hearings by reason of Commission rulings or rulings made  
13 by the undersigned as the member designated by the Commission to  
14 preside. This is a blatant, deliberate lie. All parties and  
15 their counsel were issued subpoenas to compel the attendance of  
16 any witnesses they chose to summon. If there were witnesses,  
17 not called, who had credible competent evidence relating to the  
18 charges, such fact was not made known to the Commission, nor was  
19 a continuance requested by any of the counsel involved in order  
20 to secure the attendance of any absent witnesses.

21 Further, the assertion that the presentation of the  
22 charges against the justices was hampered by adverse admissi-  
23 bility rulings is similarly false. Under the rules governing  
24 the hearings of the Commission, the rulings of the member  
25 designated as presiding officer are subject to being overruled  
26 by a majority of the Commission. The rulings thus made were  
27 consistent with the prevailing case authority in the State of  
28 Nevada.

29 It is significant that the Commission must conduct  
30 itself as a tribunal in such a function, i. e., it is limited

1 in its consideration to the facts presented at the hearing, not  
2 the information circulated by the media. In a nutshell, the  
3 charges against the accused were found to be unsupported by  
4 credible evidence.

5 In this regard, I further recommend that a rule change  
6 be enacted to permit the separation of the investigative  
7 responsibility from the other duties of the Commission. There  
8 is a question of impropriety in a procedure whereby a member  
9 participates in the process of determining probable cause to  
10 require a hearing and then sits in judgment as the ultimate  
11 trier of fact.

12 Unauthorized Disclosures.

13 The disclosure of the contents of the records of the  
14 Commission is indeed regrettable. None were authorized by  
15 Commission action. Those disclosures made by a Commission  
16 employee, similarly unauthorized and condemned, are the subject  
17 of a disciplinary complaint initiated by a strong majority of  
18 the membership of the Commission, filed with the appropriate  
19 licensing authority.

20 Conclusion.

21 While the concept of a judicial discipline commission  
22 is comparatively new in Nevada, its counterparts in other states  
23 all of whom experienced similar growing pains during their early  
24 years, have proved to be effective in improving the admini-  
25 stration of the judicial branch. Much benefit has resulted  
26 already from its activities in Nevada, as will be shown in a  
27 report to be made public in the near future. In the meantime,  
28 Nevadans should accept the fact that there is no requirement,  
29 nor likelihood, that all judges will agree on all subjects, and  
30 that the increasing number and complexity of our laws will

1 continue to generate dissent which ultimately may become the  
2 rule of the majority. There is no requirement that a judge  
3 forego his First Amendment and other constitutional rights and  
4 privileges when he assumes a judicial office.

5 My personal experience with the High Court leads me  
6 to the conclusion that recent out-of-court pronouncements by  
7 some of the judiciary may create some unpleasantness but has  
8 not affected the effectiveness of our judges, justices or the  
9 judiciary as a whole. The system should, and will, survive.

10  
11 

12 William P. Bock  
13 Alternate Member  
14 Nevada Commission on Judicial  
15 Discipline

16  
17 (To avoid any implication that this statement was issued  
18 for political purposes, it is requested that no disclosure  
19 of the same be made before November 6, 1990)

20  
21 The following persons, constituting the entire membership  
22 of the Nevada Commission on Judicial Discipline, concur  
23 in the foregoing statement:

24 Guy Shipler  
25 Stanley A. Smart  
26 Roscoe P. Bardley  
27 Peter I. Breen  
28 Eleanor Bushnell  
29 Renee Diamond  
30 Bruce Woodbury