



State of Tennessee

PUBLIC CHAPTER NO. 496

HOUSE BILL NO. 513

By Representative Curcio

Substituted for: Senate Bill No. 452

By Senators Bell, Gresham

AN ACT to amend Tennessee Code Annotated, Title 17, Chapter 5, relative to the Tennessee board of judicial conduct.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 17, Chapter 5, is amended by deleting the chapter and substituting instead the following:

17-5-101.

The regulation of judicial conduct is critical to preserving the integrity of the judiciary and enhancing public confidence in the judicial system. This chapter is intended to provide an orderly and efficient method for making inquiry into the physical, mental, and moral fitness of any Tennessee judge; the judge's manner of performance of duty; and the judge's commission of any act that reflects unfavorably upon the judiciary of the state or brings the judiciary into disrepute or that may adversely affect the administration of justice in this state. This chapter further is intended to provide a process by which appropriate sanctions may be imposed.

17-5-102.

(a) This chapter applies to:

(1) All Tennessee judges, including, but not limited to, appellate, trial, general sessions, probate, juvenile, and municipal judges, senior judges, claims commissioners, and all other judges sitting on or presiding over any court created by the general assembly or by the express or implied authority of the general assembly;

(2) All persons for their conduct while sitting or presiding over any judicial proceeding, including, but not limited to, persons sitting by special appointment; and

(3) Candidates for judicial office, as defined by the Code of Judicial Conduct, Rule 10 of the Rules of the Tennessee Supreme Court.

(b) This chapter does not apply to administrative law judges.

(c) This chapter regulates judicial behavior, not judicial decision-making.

17-5-103.

This chapter must be liberally construed to accomplish the declared purposes and intents set forth in this chapter.

17-5-201.

(a) As of the effective date of this act, the existing membership of the Tennessee board of judicial conduct is vacated and reconstituted to consist of sixteen (16) members as follows:

(1) Two (2) current or former trial judges, to be appointed by the Tennessee trial judges association;

(2) One (1) current or former general sessions court judge, to be appointed by the Tennessee general sessions judges conference;

(3) One (1) current or former municipal court judge, to be appointed by the Tennessee municipal judges conference;

(4) One (1) current or former juvenile court judge, to be appointed by the Tennessee council of juvenile and family court judges;

(5) One (1) current or former court of appeals or court of criminal appeals judge, to be appointed by the Tennessee supreme court;

(6) Two (2) members who are attorneys licensed to practice law in this state but who are not current or former judges, to be appointed by the governor;

(7) Four (4) members, including three (3) who are neither a judge nor an attorney and one (1) who is a current or former judge, to be appointed by the speaker of the house of representatives; and

(8) Four (4) members, including three (3) who are neither a judge nor an attorney and one (1) who is a current or former judge, to be appointed by the speaker of the senate.

(b)

(1) All appointments to the board must be made by July 1, 2019.

(2) In order to stagger the terms of the newly appointed board members, initial appointments must be made as follows:

(A) The members appointed under subdivisions (a)(1)-(5) serve initial terms of one (1) year, which expire on June 30, 2020;

(B) The members appointed under subdivision (a)(6) and the current or former judges appointed under subdivisions (a)(7) and (8) serve initial terms of two (2) years, which expire on June 30, 2021; and

(C) The members appointed under subdivisions (a)(7) and (8) who are neither judges nor attorneys serve initial terms of three (3) years, which expire on June 30, 2022.

(3) Following the expiration of members' initial terms as prescribed in subdivision (b)(2), all terms are for three (3) years, to begin on July 1 and terminate on June 30, three (3) years thereafter.

(4) Each member of the board appointed under subdivisions (b)(2)(A) and (B) may be appointed to two (2) additional consecutive three-year terms. Each member appointed under subdivision (b)(2)(C) may be appointed to one (1) additional consecutive three-year term.

(5) A member whose initial term is created by a vacancy and who has served in the position for less than three (3) years is eligible to serve two (2) consecutive three-year terms following the expiration of the term in which the vacancy occurred. Vacancies on the court for an unexpired term must be filled for the remainder of the term in the same manner that original appointments are made, but are for the duration of the unexpired term only. Vacancies are filled in the same manner that original appointments are made.

(6) A member who has served the maximum term is eligible for reappointment after the expiration of three (3) years.

(c) The board shall select:

(1) Its own chair from among the current or former judges serving on the board, who shall serve as a direct liaison to the members of the general assembly; and

(2) Its own vice chair.

(d)

(1)

(A) The chair shall divide the board into:

(i) Five (3) investigative panels of three (3) members each, with each investigative panel to be composed of at least one (1) member who is a current or former judge; and

(ii) Three (3) hearing panels of five (5) members each, with two (2) hearing panels to each be composed of three (3) non-judicial members and two (2) members who are current or former judges, and one (1) hearing panel to be composed of two (2) non-judicial members and three (3) members who are current or former judges.

(B) The chair shall not serve as a permanent member of an investigative panel or hearing panel but may serve as a member of a panel on a temporary basis to fill a vacancy.

(C) Membership on the panels may rotate in a manner determined by the chair; however, no members may sit on both the hearing and investigative panels for the same proceeding.

(2) A hearing panel has the duty and authority to rule on prehearing motions, conduct hearings on formal charges, make findings and conclusions, impose sanctions, or dismiss the case.

(3)

(A) An investigative panel has the duty and authority to:

(i) Review the recommendations of the disciplinary counsel after a preliminary investigation and either authorize a full investigation or dismiss the complaint; and

(ii) Review the recommendations of the disciplinary counsel after a full investigation and approve, disapprove, or modify the recommendations as provided in § 17-5-303(c)(3).

(B) The investigative panel shall require a full investigation when a motion to dismiss a complaint fails to receive a unanimous vote from the panel or where a motion to authorize a full investigation passes by a majority vote of the panel.

(4) An attorney member of the board shall not sit on an investigative or hearing panel if the attorney has ever appeared before the judge against whom the complaint is filed.

(5)

(A)

(i)

(a) A current or former judge who serves on the board and is the subject of a full investigation by the board or is a party to a hearing before the board must recuse

himself or herself from the board pending the completion of such action, with the vacancy to be filled for the duration of the recusal only.

(b) A current or former judge who is subject to a deferred discipline agreement must recuse himself or herself from the board for the duration of the agreement, with the vacancy to be filled for the duration of the recusal only.

(ii) A citizen member of the board must recuse himself or herself to avoid any impropriety, appearance of impropriety, or conflict of interest relating to the person's duties as a board member and matters that may come before the board.

(B) A current or former judge whose conduct results in the board taking public disciplinary action against the judge will result in the judge's automatic dismissal from the board, creating a vacancy to be filled by the appropriate appointing authority.

(C) If a member recuses himself or herself or is dismissed pursuant to this subdivision (d)(5), all board matters may be heard by the remaining members of the board or, at the option of the members, a temporary replacement may be designated from the board by a majority vote of such members to sit on any investigative or hearing panel the recused or dismissed member was on.

(e) The board shall sit at such times and in such places as it may, from time to time, deem expedient.

(f) The board may promulgate rules regulating the practice and procedure before the board. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) The clerk of the supreme court serves as the clerk of the board, and shall keep such records, minutes, and dockets as the board from time to time prescribes.

(h) Members of the board receive no compensation for their services; however, they are reimbursed for food, lodging, and travel expenses pursuant to policies and guidelines promulgated by the supreme court. All expenses for which reimbursement is allowed under this section must be submitted by the members of the board to the administrative director of the courts upon forms provided and prescribed by that officer.

(i) The appointing authorities, in making their appointments, shall strive to ensure the makeup of the board reflects the diversity of persons in Tennessee.

17-5-202.

(a)

(1) By the twentieth day of each month, the board shall compile and transmit to the judiciary committee of the house of representatives and the judiciary committee of the senate a report containing at least the following information for the previous month:

(A) The number and category of complaints opened;

(B) The number and category of complaints closed; and

(C) The disposition of the complaints closed by category.

(2) The monthly report must also contain a cumulative, year-to-date total for the complaints reported in subdivisions (a)(1)(A)-(C).

(b) By the twentieth day of January, April, July, and October of each year, the board shall compile and transmit to the judiciary committee of the house of representatives and the judiciary committee of the senate a report containing at least the following information for the prior three-month period:

- (1) The number of complaints opened;
- (2) The number of complaints closed;
- (3) The disposition of complaints closed;
- (4) The number of complaints pending;
- (5) The number of complaints for which probable cause has been found;

(6) The number of complaints for which formal charges have been filed based on a recommendation by an investigative panel, including the nature of the charge, the names of the complainant or complainants, and the judge against whom the complaint is filed;

(7) The nature of any complaint filed according to the following categories:

- (A) Failure to comply with the law;
- (B) Bias, prejudice, and unfairness;
- (C) Discourtesy;
- (D) Abuse of office;
- (E) Delay;
- (F) Ex parte communication;
- (G) Disability;
- (H) Political violation;
- (I) Recusal; and
- (J) Miscellaneous;

(8) The type of judge against whom a complaint is filed by category; and

(9) A list of votes taken by each board member as follows:

- (A) The member's name;
- (B) The number of times the member voted to dismiss a complaint while on an investigative panel; and
- (C) The number of times the member voted to authorize an investigation while on an investigative panel.

(c) The quarterly reports must contain a cumulative, year-to-date total of the information compiled in subsection (b).

(d) The October report must also contain a five-year statistical comparison of the prior five (5) fiscal years for the same categories.

(e) The board shall promulgate rules to establish a formal records retention policy and shall review the policy on an annual basis to determine if changes should be made.

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Such rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

17-5-203.

(a) The chair of the board shall provide the speaker of the senate and the speaker of the house of representatives with the name, type of judge, judicial district, if applicable, the reason for the reprimand, and the number of previous reprimands within five (5) business days of the occurrence of each of the following actions:

(1) A judge receives a second or subsequent public reprimand for conduct occurring during the period of time the person is a sitting judge;

(2) A judge receives a second or subsequent private reprimand for conduct within the same misconduct category set out in § 17-5-202(b)(7) occurring during any eight-year term the person holds the office of judge; or

(3) A judge receives a third or subsequent private reprimand for conduct within any of the misconduct categories set out in § 17-5-202(b)(7) occurring during any eight-year term the person holds the office of judge.

(b)

(1) The notice provided to the speakers pursuant to subdivision (a)(1) is a public record.

(2) The notice provided to the speakers pursuant to subdivision (a)(2) or (a)(3) remains confidential unless the general assembly opens an investigation of a judge pursuant to article VI, § 6 or article V of the Tennessee Constitution.

17-5-301.

(a) The board is given broad powers to investigate, hear, and determine charges sufficient to warrant sanctions or removal, and to carry out its duties in all other matters as set forth in this chapter.

(b) The board is specifically authorized to administer oaths and affirmations, to issue process to compel the attendance of witnesses and the production of evidence, to conduct hearings, and to use, exercise, and enjoy any of the powers normally exercised by courts of record in this state. The Tennessee Rules of Civil Procedure are applicable, and the Tennessee Rules of Evidence govern the presentation of proof. The board shall conduct discovery and review the materials collected in camera; provided, that only materials relevant to the investigation shall be made public.

(c) No action of the board is valid unless concurred in by a majority of the members voting upon the action.

(d) The attorney serving as disciplinary counsel for the board immediately preceding the effective date of this act shall relinquish the position and a new disciplinary counsel is to be appointed by the board. The disciplinary counsel shall serve at the pleasure of the board and may be removed by the board. The disciplinary counsel shall report to the board upon appointment. The disciplinary counsel may employ additional attorneys or staff for administrative support, subject to the approval of the board. Compensation for the disciplinary counsel and additional personnel is fixed by the board. This section shall not be construed to preclude disciplinary counsel employed by the board of professional responsibility from acting as disciplinary counsel and the staff and physical resources of the board of professional responsibility from being utilized, with the approval of the court, to assist in the performance of the disciplinary counsel's functions effectively and without delay. The board shall compensate the board of professional responsibility for the use of any such staff and physical resources.

(e) The disciplinary counsel has the authority and duty to:

(1) Receive and screen complaints, refer complaints to other agencies when appropriate, conduct preliminary investigations, make recommendations to the investigative panel of the board and, upon authorization, conduct full investigations, notify complainants about the status and disposition of their complaints, make recommendations to the investigative panel on the disposition of complaints after full investigation, file formal charges subject to approval of the investigative panel when directed to do so by the investigative panel, and prosecute formal charges;

(2) Maintain permanent records of the operations of the disciplinary counsel's office, including receipt of complaints, screening, investigation, and filing of formal charges in judicial discipline and incapacity matters;

(3) Draft decisions, orders, reports, and other documents on behalf of the hearing and investigative panels if directed by the board;

(4) Compile statistics to aid in the administration of the system, including, but not limited to, a log of all complaints received, investigative files, and statistical summaries of docket processing and case dispositions, consistent with § 17-5-202;

(5) Seek investigative assistance from the Tennessee bureau of investigation, or from any district attorney general and, in appropriate cases, employ private investigators or experts, as necessary, to investigate and process matters before the board. Such action may only be taken in concurrence with the applicable investigative panel; and

(6) Perform other duties at the direction of a majority of the board.

(f)

(1) The board has the power to impose any, or any combination, of the following:

(A) Suspension without impairment of compensation for such period as the board determines;

(B) Imposition of limitations and conditions on the performance of judicial duties, including the issuance of a cease and desist order;

(C) Private reprimand by the investigative panel. A private reprimand, whether imposed by the board or by an investigative panel, may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of the sanctions to be imposed;

(D) Entry into a deferred discipline agreement;

(E) Public reprimand; and

(F) Entry of judgment recommending removal of the judge from office.

(2) Disciplinary counsel fees and costs related to the hearing by a hearing panel shall not be taxed against the judge unless the sanction imposed requests the judge's removal from office.

(g) For purposes of this part, the following definitions apply:

(1) "Deferred discipline agreement" means a response to misconduct that is minor and can be addressed through treatment, training, or a rehabilitation program under which the judge agrees with the recommendation of the investigative panel of the board to undergo evaluation or treatment, or both; participate in educational programs; or take any other corrective action. Any other disciplinary sanction arising from the same conduct is suspended during

the term of a deferred discipline agreement, and no further sanction may be imposed upon the successful completion of the deferred disciplinary agreement by the judge. The disciplinary counsel may proceed with other appropriate action upon a judge's failure to comply with the disciplinary agreement;

(2) "Private reprimand" means a form of non-public discipline imposed by a letter that details the finding of minor judicial misconduct and enumerates the reasons that such conduct is improper or brings discredit upon the judiciary or the administration of justice; and

(3) "Public reprimand" means a private reprimand that is released to the public.

(h) A sanction imposed by the board does not violate the prohibition of article VI, § 7 of the Tennessee Constitution.

(i) The board or the investigatory panel shall consider the following criteria in determining the sanction or combination of sanctions appropriate for the level of culpability involved in the judge's misconduct:

(1) Whether the misconduct is an isolated instance or evidences a pattern of conduct;

(2) The nature, extent, and frequency of occurrence of the acts of misconduct;

(3) Whether the misconduct occurred in or out of the courtroom;

(4) Whether the misconduct occurred while the judge was acting in an official capacity;

(5) Whether the judge has acknowledged or recognized the occurrence, nature, and impropriety of the acts;

(6) Whether the judge has made an effort to change or modify the conduct;

(7) The level of sanction, if any, previously rendered against other judges for the same conduct;

(8) Whether there have been prior complaints about the judge, except where prior complaints have been found to be frivolous, unfounded, or without jurisdiction pursuant to § 17-5-304;

(9) The effect of the misconduct upon the integrity of, and respect for, the judiciary;

(10) The extent to which the judge exploited the judicial position for personal gain or satisfaction; and

(11) The sanction or sanctions imposed against other judges for the same or similar misconduct under the same or similar circumstances.

(j)

(1) The board may consider the following offenses in determining the sanction or combination of sanctions appropriate for the level of culpability involved in the judge's conduct:

(A) Willful misconduct relating to the official duties of the office;

(B) Willful or persistent failure to perform the duties of the office;

(C) A violation of the code of judicial conduct as set out in Rule 10 of the Rules of the Tennessee Supreme Court;

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(D) A violation of the Tennessee Rules of Professional Conduct as set out in Rule 8 of the Rules of the Tennessee Supreme Court, as is applicable to judges;

(E) A persistent pattern of intemperate, irresponsible, or injudicious conduct;

(F) A persistent pattern of discourtesy to litigants, witnesses, jurors, court personnel, or lawyers;

(G) A persistent pattern of delay in disposing of pending litigation; and

(H) Any other conduct calculated to bring the judiciary into public disrepute or to adversely affect the administration of justice.

(2) The legal analysis, findings of fact, and conclusions of law of a written opinion or order by a judge are not grounds for sanction under this subsection (j); provided, that the personal views of a judge contained within a written opinion or order by a judge are not protected by this subdivision (j)(2).

17-5-302.

(a) The board is authorized, on its own motion, or pursuant to the complaint of a person having reason to believe a judge is disabled, to investigate and take appropriate action, including recommendation of removal from office, in any case wherein an active judge is suffering from any disability, physical or mental, that is or is likely to become permanent and that would substantially interfere with the prompt, orderly, and efficient performance of the judge's duties.

(b) All complaints made under this section are confidential and privileged.

(c) If the board recommends removal from office under this section, the aggrieved judge may appeal to the supreme court as provided in § 17-5-309.

17-5-303.

(a) The disciplinary counsel shall evaluate all information coming to the disciplinary counsel's attention by complaint, upon the request of any member of the board, or from any other credible source that alleges judicial misconduct or incapacity within fourteen (14) days of the date of a written complaint being filed, a request being submitted, or the receipt of information from a credible source alleging judicial misconduct or incapacity.

(b) In instances in which a complaint is filed, the complaint must be submitted in writing, must contain the name of the complainant, must be signed by the complainant, and must allege specific facts directly relating to the alleged misconduct or incapacity of the judge in question. The disciplinary counsel shall review all complaints and if, in the judgment of the disciplinary counsel, the complaint establishes probable cause that the conduct complained of occurred and violates § 17-5-301(j), the disciplinary counsel shall conduct a preliminary investigation, subject to review by the investigative panel pursuant to subdivision (c)(3). The preliminary investigation must be completed within sixty (60) days of the receipt of the complaint, unless the chair authorizes additional time for the completion of the investigation. If the disciplinary counsel believes the complaint fails to establish probable cause that either the conduct occurred or the conduct constituted a violation of § 17-5-301(j), the disciplinary counsel shall recommend dismissal of the complaint or, if appropriate, refer the matter to another agency. The recommendation for dismissal is subject to review by the investigative panel pursuant to subdivision (c)(3).

(c)

(1) The disciplinary counsel may conduct interviews and examine evidence to determine whether the specific facts alleged are true and, if so, whether the facts establish probable cause that a violation of § 17-5-301(j) has

occurred; however, the disciplinary counsel shall not issue a subpoena to obtain testimony or evidence until the investigative panel authorizes a full investigation pursuant to subdivision (c)(3).

(2) If the disciplinary counsel believes there is evidence supporting the allegations against a judge, the disciplinary counsel shall recommend to the investigative panel assigned to the case that the panel authorize a full investigation. The disciplinary counsel may also recommend a full investigation when the disciplinary counsel believes there is evidence that would establish probable cause that a violation of § 17-5-301(j) has occurred and such evidence could be obtained by subpoena or further investigation. In all other cases, the disciplinary counsel must recommend that the matter be dismissed. The disciplinary counsel shall make the recommendation to the investigative panel within fourteen (14) days of the disciplinary counsel's completion of the preliminary investigation.

(3) The investigative panel shall review the disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation within fourteen (14) days of receipt of the disciplinary counsel's recommendation. The disciplinary counsel has no authority to dismiss a complaint without the review of and approval by the investigative panel.

(d)

(1) Within fourteen (14) days after the investigative panel authorizes a full investigation, the disciplinary counsel shall give the following notice to the judge by certified mail:

(A) A specific statement of the allegations being investigated and the canons or rules allegedly violated, with the provision that the investigation can be expanded, if appropriate;

(B) The judge's duty to respond;

(C) The judge's opportunity to meet with the disciplinary counsel;
and

(D) The name of the complainant, unless the investigative panel determines that there is good cause to withhold such information.

(2) The investigative panel may defer the giving of notice; however, notice must be given pursuant to this section before making a determination other than dismissal of the complaint.

(3) The disciplinary counsel shall request the judge to file a written response within fourteen (14) days after service of the notice.

(e)

(1) The disciplinary counsel shall complete its investigation within thirty-five (35) days of being authorized by the investigative panel. The disciplinary counsel shall notify the investigative panel of disciplinary counsel's recommendation within seven (7) days of completion of the disciplinary counsel's investigation. The disciplinary counsel may recommend to the investigative panel any, or any combination, of the following:

(A) Dismissal;

(B) Private reprimand, deferred discipline agreement, public reprimand, or any other sanction authorized under § 17-5-301(f)(1);

(C) The filing of formal charges;

(D) Referral to an appropriate agency; or

(E) A stay of the thirty-five-day period for completing the investigation as prescribed in this subdivision (e)(1).

(2) The investigative panel shall act on the disciplinary counsel's recommendation within ten (10) days of its receipt. The investigative panel may adopt, reject, or modify the recommendation of the disciplinary counsel. If the investigative panel finds a violation for which the imposition of a sanction is not warranted, it may dismiss the complaint. If the investigative panel finds that there is reasonable cause to believe the judge committed a judicial offense:

(A) It may direct the disciplinary counsel to file formal charges;

(B)

(i) It may propose any, or any combination, of the following to the judge:

(a) Private reprimand;

(b) Deferred discipline agreement;

(c) Public reprimand; or

(d) Any other sanction authorized under § 17-5-301(f)(1); and

(ii) If the judge consents, the investigative panel shall impose the sanction or implement the deferred sanction agreement; or

(C) If the judge does not consent to the proposed sanction or the deferred discipline agreement, the investigative panel may direct the disciplinary counsel to either file formal charges or dismiss the complaint.

(f) If the investigative panel finds there is reasonable cause to believe the judge committed a judicial offense, and the investigative panel directs the disciplinary counsel to file a formal charge, then upon the filing of the formal charge, all records, actions, and proceedings of the board shall be subject to § 10-7-503 and title 8, chapter 44, except that the board may deliberate in private.

(g) Upon the filing of an indictment, presentment, or information charging a judge with a felony under the law of any state or under federal law, the board may immediately place the judge on interim suspension.

17-5-304.

If it is determined that the charges against a judge are frivolous or unfounded, or beyond the permissible scope of the board's inquiry, the matter will be closed and all documents, records, and papers pertaining to the charges must be destroyed and the board's docket must recite the investigation and dismissal of a groundless complaint.

17-5-305.

Members of the board, the disciplinary counsel, and their staff are immune from civil suit for all conduct in the course of their official duties, except in cases of gross negligence or willful misconduct.

17-5-306.

(a) When, in the preliminary judgment of the investigative panel, there is probable cause to believe the judge under investigation is guilty of one (1) or more of the offenses under § 17-5-301(j), or is suffering from a disability as set forth in § 17-5-302, it is the duty of disciplinary counsel to give the judge under investigation written notice of the details of the formal charges.

(b) The formal charges must give fair and adequate notice of the nature of the alleged misconduct or incapacity. The disciplinary counsel shall file the formal charges with the board. The disciplinary counsel shall cause a copy of the formal charges to be served on the judge or the judge's counsel by certified mail and shall file proof of service with the board.

(c) The judge has fourteen (14) days from the date of receipt of written notice of the formal charge to file an answer with the board and serve a copy on the disciplinary counsel.

(d) A judge who raises a defense based on a mental or physical condition waives any medical privilege.

(e) If the judge fails to answer the formal charges, then the failure to answer constitutes an admission of the factual allegations.

(f) If the judge fails to appear when specifically ordered to do so by the hearing panel or the board, the judge is deemed to have admitted the factual allegations that were to be the subject of the appearance and to have conceded the merits of any motion or recommendation to be considered at the appearance. Absent good cause, the hearing panel or board shall not continue or delay proceedings because of the judge's failure to appear.

(g)

(1) The judge may agree with the disciplinary counsel that the judge shall admit to any or all of the formal charges in exchange for a stated sanction at any time after the filing of formal charges and before final disposition. The agreement must be submitted to the hearing panel assigned to the case, which shall either:

(A) Reject the agreement; or

(B) Approve the agreement and enter the order to sanction the judge.

(2) If the stated sanction is rejected by the hearing panel, the agreement must be withdrawn and cannot be used against the judge in any proceedings.

(3) A judge who consents to a stated sanction shall sign an affidavit stating that:

(A) The judge consents to the sanction;

(B) The consent is freely and voluntarily rendered;

(C) There is a pending proceeding involving allegations of misconduct, which must be specifically set forth in the affidavit; and

(D) The facts set forth in the affidavit are true.

(4) The affidavit must be filed with the board upon its approval by the hearing panel. The affidavit remains confidential until it is filed with the board. The final order of sanction must be based on the formal charges and the conditional admission.

17-5-307.

(a) The matter must be set for hearing within thirty (30) days from the date the answer is filed. The hearing is a full evidentiary hearing at which the judge is entitled to due process, including the right to be represented by counsel, the right of compulsory process to secure the attendance of witnesses, the right of confrontation and of cross-examination of witnesses, and the right to a speedy and public trial. Upon demand of the judge, or upon a finding by the board that the public interest would be served, the trial must be conducted in the county of the judge's residence. A complete transcript of the trial must be prepared by a court reporter.

(b) The hearing panel shall conduct the hearing. Members of the investigative panel for the particular cause shall not participate in the hearing or the deliberations of the cause.

(c) A majority of the hearing panel constitutes a quorum, and a quorum of the hearing panel is required to hold a hearing. The hearing panel shall decide a matter only upon the concurrence of a majority of all members of the panel hearing the matter. The decision of the hearing panel is the decision of the board.

(d) Charges of misconduct must be established by clear and convincing evidence.

17-5-308.

(a) The board, acting through the hearing panel, may dismiss the charges or impose any sanction authorized in § 17-5-301(f)(1) at the conclusion of the hearing.

(b) The board shall issue a formal finding of fact and opinion within thirty (30) days of the conclusion of the hearing regardless of the sanction imposed. The hearing panel may make a written request to the chair of the board for an extension of time within which to file its findings and judgment. If the hearing panel does not submit its findings and judgment within thirty (30) days, the disciplinary counsel shall report the failure to submit such findings and judgment to the board, which may take any action it deems necessary to secure the submission of the information. The failure of the hearing panel to meet the deadline is not grounds for dismissal of the formal charges.

(c) If the board recommends the removal of a judge from office and by reason of resignation, death, or retirement, the board determines that its recommendation is moot, its formal opinion shall so state. For purposes of this subsection (c), the board's removal recommendation shall be considered moot only if the board determines there is no further punitive action the general assembly could take against the judge.

17-5-309.

(a) The aggrieved judge may appeal to the supreme court, as a matter of right, within fourteen (14) days from the date of entry of the judgment of the board. The record on appeal must conform to the requirements of Rule 24 of the Tennessee Rules of Appellate Procedure.

(b)

(1) The review in the supreme court is de novo on the record made before the board. There is no presumption of correctness of the judgment or the findings of the board.

(2) The supreme court shall convene within seven (7) days after all briefs are filed to hear oral arguments and shall file a written opinion within fourteen (14) days thereafter.

17-5-310.

(a) If the supreme court affirms the action of the board as provided in § 17-5-308, the judgment of the supreme court is final. If the supreme court affirms the action of the board in recommending removal of the judge in accordance with § 17-5-302 or §§ 17-5-308 and 17-5-301(f)(1)(F), the recommendation for removal must be transmitted to the general assembly for a final determination. However, if the supreme court affirms the board's action recommending the removal of a judge and its determination that the recommendation is moot as provided in § 17-5-308(c), the matter may not be transmitted to the general assembly for a final determination but is final upon the supreme court's action.

(b) The clerk of the supreme court shall send written notice of the supreme court's action to affirm the recommendation for removal to the speaker of the senate and speaker of the house of representatives. The clerk of the supreme court shall certify the

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entire record, including the briefs filed in the supreme court and the opinion of that court, to the speaker of the senate and the speaker of the house of representatives within five (5) days of the clerk's receipt of such record.

(c) The procedure for the removal of a judge provided in accordance with this chapter must not be construed as limiting or altering the power of impeachment, as provided in the Tennessee Constitution, article 5 or the power of removal as provided in the Tennessee Constitution, article VI, § 6.

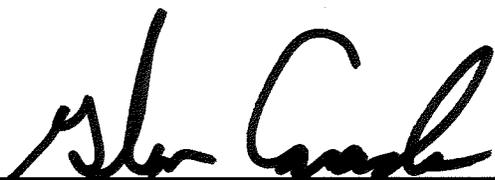
17-5-311.

If a conflict arises between the timeframe provided for in this chapter and the timeframe set out in the rules of practice and procedure, the rules of practice and procedure shall control.

SECTION 2. For the purposes of vacating and reconstituting the board and appointing a new disciplinary counsel, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2019, the public welfare requiring it.

HOUSE BILL NO. 513

PASSED: May 2, 2019



GLEN CASADA, SPEAKER
HOUSE OF REPRESENTATIVES



RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 24th day of May 2019



BILL LEE, GOVERNOR