

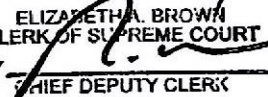
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION OF A
COMMISSION TO STUDY THE STATUTES
AND RULES OF THE COMMISSION ON
JUDICIAL DISCIPLINE AND UPDATE, AS
NECESSARY, THE NEVADA CODE OF
JUDICIAL CONDUCT

ADKT 582

FILED

MAY 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

PETITION

James W. Hardesty, Chief Justice of the Nevada Supreme Court, petitions the Nevada Supreme Court, on its administrative docket, to consider the creation of a Commission to Study the Statutes and Rules of the Commission on Judicial Discipline. In support of the petition, Chief Justice Hardesty alleges that:

1. Under existing Nevada law, the Commission on Judicial Discipline has exclusive jurisdiction over the public censure, removal, involuntary retirement, and other discipline of Nevada's judges. The Nevada Constitution also requires that the Commission adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties.

2. During the 2021 Legislative Session, the Nevada Supreme Court, on behalf of the Nevada Judges of Limited Jurisdiction Association, put forth A.B. 43, proposing changes to the procedural and substantive rules of the Commission on Judicial Discipline.¹ In response, the Nevada Legislature amended A.B. 43 and requested that the Nevada Supreme Court form a Commission to "[s]tudy and make recommendations concerning the procedural and substantive statutes and rules of the Commission on Judicial Discipline...." Further, the Legislature requests that the Nevada Supreme Court "[c]ompile all statistics... relating to the work of the Commission on Judicial Discipline for consideration by the Legislature."²

3. As a related topic, the Nevada Supreme Court last updated the Nevada Code of Judicial

¹ Attached to the Petition as Exhibit "A".

² Attached to the Petition as Exhibit "B".

21-14452

Conduct in December of 2009. The revised Nevada Code of Judicial Conduct took effect January 19, 2010.

4. The American Bar Association's Model Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association on August 7, 1990, and was amended on August 6, 1997; August 10, 1999; August 12, 2003; February 12, 2007; and August 10, 2010. Petitioner is informed and believes that the ABA August 10, 2010 amendments, as well as court decisions over the past decade on the topic of judicial discipline, may inform the Nevada Supreme Court of potential updates to the Nevada Code of Judicial Conduct.

Accordingly, petitioner requests that the Nevada Supreme Court place this Petition on its administrative docket and, following a public hearing thereon, approve the creation of the Commission to Study the Statutes and Rules of the Commission on Judicial Discipline and make recommendations, if necessary, to the Nevada Code of Judicial Conduct; authorize the Chief Justice to appoint members to the Commission that include appropriate representation from District Judges, Limited Jurisdiction Judges, the State Bar of Nevada, and the Commission on Judicial Discipline; and require the Commission to provide its report and recommendations no later than October 31, 2022.

Respectfully submitted,

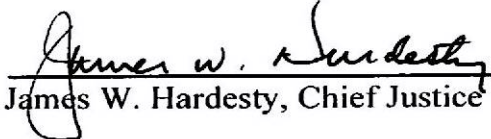

James W. Hardesty, Chief Justice

EXHIBIT A

ASSEMBLY BILL NO. 43—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing judicial discipline.
(BDR 1-393)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

AN ACT relating to the judiciary; requiring the Nevada Judges of Limited Jurisdiction to advise the Nevada Supreme Court on the appointment of certain members of the Commission on Judicial Discipline in certain circumstances; creating two panels for investigation and adjudication of a complaint against a judge; revising provisions relating to the standard of proof for a hearing before the Commission; removing the requirement that a judge must respond to a complaint; 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 in this State. (Nev. Const. Art. 6, § 21; NRS 1.440) The Nevada
4 Constitution requires that the Commission be composed of seven members,
5 including two members appointed by the Nevada Supreme Court. (Nev. Const. Art.
6 6, § 21) Existing law also provides that if a justice of the peace or a municipal
7 judge is required to appear before the Commission in formal, public proceedings,
8 the Nevada Supreme Court must appoint two justices of the peace or two municipal
9 judges, respectively, to replace the regular Supreme Court appointees for those
10 formal, public proceedings. (NRS 1.440) **Section 1** of this bill requires the Nevada
11 Supreme Court to make these appointments with the advice of the Nevada Judges
12 of Limited Jurisdiction, which is an association of justices of the peace and
13 municipal judges in this State.

14 The Nevada Constitution provides that the term of a member of the
15 Commission is 4 years, but the Nevada Constitution and existing law do not
16 establish a limit on the number of terms a member may serve on the Commission.



17 (Nev. Const. Art. 6, § 21) **Section 1** of this bill limits a member of the Commission
18 to serving two 4-year terms.

19 The Nevada Constitution requires the Commission to adopt rules of procedure
20 for the conduct of its hearings and any other procedural rules it deems necessary to
21 carry out its duties. (Nev. Const. Art. 6, § 21) **Section 2** of this bill separates the
22 investigative and adjudicative functions of the Commission into two panels. The
23 investigative panel will determine whether formal charges should be filed against a
24 judge. The adjudicative panel will consider the evidence and testimony at the
25 hearing.

26 Existing law authorizes formal charges to be brought by the Commission when
27 there is reasonable probability that the evidence available for introduction at a
28 formal hearing will prove clearly and convincingly that disciplinary action is
29 appropriate against a judge. (NRS 1.4655, 1.4667, 1.467, 1.468) **Sections 3-6** of
30 this bill authorize formal charges to be brought against a judge when there is a
31 reasonable probability, supported by clear and convincing evidence, of establishing
32 grounds for disciplinary action against the judge. Clear and convincing evidence is
33 proof that requires "evidence establishing every factual element to be highly
34 probable." (*Ferguson v. Las Vegas Metro. Police Dep't.*, 131 Nev. 939, 945 (2015))

35 Existing law further requires a judge to respond to a complaint filed against him
36 or her. (NRS 1.4667, 1.467) **Sections 4 and 5** of this bill remove the requirement
37 that the judge must respond to the complaint but require the Commission to provide
38 the judge with an opportunity to respond to the complaint.

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

1 **Section 1.** NRS 1.440 is hereby amended to read as follows:

2 1.440 1. The Commission has exclusive jurisdiction over the
3 public censure, removal, involuntary retirement and other discipline
4 of judges which is coextensive with its jurisdiction over justices of
5 the Supreme Court and must be exercised in the same manner and
6 under the same rules.

7 2. Any complaint or action, including, without limitation, an
8 interlocutory action or appeal, filed in connection with any
9 proceeding of the Commission must be filed in the Supreme Court.
10 Any such complaint or action filed in a court other than the Supreme
11 Court shall be presumed to be frivolous and intended solely for the
12 purposes of delay.

13 3. ~~{The}~~ *With the advice of the Nevada Judges of Limited*
14 *Jurisdiction, or its successor organization, the* Supreme Court shall
15 appoint two justices of the peace and two municipal judges to sit on
16 the Commission ~~{for formal, public proceedings}~~ *upon the*
17 *initiation of a formal investigation* against a justice of the peace or
18 a municipal judge, respectively. Justices of the peace and municipal
19 judges so appointed must be designated by an order of the Supreme
20 Court to sit for ~~{such}~~ *any* proceedings in place of and to serve for
21 the same terms as the regular members of the Commission
22 appointed by the Supreme Court.



1 **4. Each regular member of the Commission may serve a total**
2 **of two 4-year terms.**

3 **Sec. 2.** NRS 1.462 is hereby amended to read as follows:

4 1.462 1. Proceedings before the Commission are civil matters
5 designed to preserve an independent and honorable judiciary.

6 2. Except as otherwise provided in NRS 1.425 to 1.4695,
7 inclusive, or in the procedural rules adopted by the Commission,
8 after a formal statement of charges has been filed, the Nevada Rules
9 of Civil Procedure apply.

10 **3. In proceedings before the Commission, the investigative**
11 **and adjudicative functions of the Commission must be separated**
12 **into two panels. The investigative panel shall determine whether**
13 **the matter should proceed to the filing of a formal statement of**
14 **charges. If a formal statement of charges is filed, the adjudicative**
15 **panel may only consider the evidence and testimony presented at**
16 **the hearing. Any investigative report or informational report must**
17 **not be provided to the adjudicative panel.**

18 **Sec. 3.** NRS 1.4655 is hereby amended to read as follows:

19 1.4655 1. The Commission may begin an inquiry regarding
20 the alleged misconduct or incapacity of a judge upon the receipt of a
21 complaint.

22 2. The Commission shall not consider complaints arising from
23 acts or omissions that occurred more than 3 years before the date of
24 the complaint or more than 1 year after the complainant knew or in
25 the exercise of reasonable diligence should have known of the
26 conduct, whichever is earlier, except that:

27 (a) Where there is a continuing course of conduct, the conduct
28 will be deemed to have been committed at the termination of the
29 course of conduct;

30 (b) Where there is a pattern of recurring judicial misconduct and
31 at least one act occurs within the 3-year or 1-year period, as
32 applicable, the Commission may consider all prior acts or omissions
33 related to that pattern; and

34 (c) Any period in which the judge has concealed or conspired to
35 conceal evidence of misconduct is not included in the computation
36 of the time limit for the filing of a complaint pursuant to this
37 section.

38 3. Within 18 months after the receipt of a complaint pursuant
39 to this section, the Commission shall:

40 (a) Dismiss the complaint with or without a letter of caution;

41 (b) Attempt to resolve the complaint informally as required
42 pursuant to NRS 1.4665;

43 (c) Enter into a deferred discipline agreement pursuant to
44 NRS 1.468;



1 (d) With the consent of the judge, impose discipline on the judge
2 pursuant to an agreement between the judge and the Commission; or

3 (e) Authorize the filing of a formal statement of the charges
4 based on a finding that there is a reasonable probability ~~{that the~~
5 ~~evidence available for introduction at a formal hearing could clearly~~
6 ~~and convincingly establish}~~ , **supported by clear and convincing**
7 **evidence, of establishing** grounds for disciplinary action.

8 **Sec. 4.** NRS 1.4667 is hereby amended to read as follows:

9 1.4667 1. The Commission shall review the report prepared
10 pursuant to NRS 1.4663 to determine whether there is a reasonable
11 probability ~~{that the evidence available for introduction at a formal~~
12 ~~hearing could clearly and convincingly establish}~~ , **supported by**
13 **clear and convincing evidence, of establishing** grounds for
14 disciplinary action against a judge.

15 2. If the Commission determines that such a reasonable
16 probability does not exist, the Commission shall dismiss the
17 complaint with or without a letter of caution. The Commission may
18 consider a letter of caution when deciding the appropriate action to
19 be taken on a subsequent complaint against a judge unless the
20 caution is not relevant to the misconduct alleged in the subsequent
21 complaint.

22 3. If the Commission determines that such a reasonable
23 probability exists, the Commission shall ~~{require}~~ **provide** the judge
24 **an opportunity** to respond to the complaint in accordance with
25 procedural rules adopted by the Commission.

26 **Sec. 5.** NRS 1.467 is hereby amended to read as follows:

27 1.467 1. After **providing** a judge ~~{responds}~~ **an opportunity**
28 **to respond** to the complaint as required pursuant to NRS 1.4667, the
29 Commission shall make a finding of whether there is a reasonable
30 probability ~~{that the evidence available for introduction at a formal~~
31 ~~hearing could clearly and convincingly establish}~~ , **supported by**
32 **clear and convincing evidence, of establishing** grounds for
33 disciplinary action against the judge.

34 2. If the Commission finds that such a reasonable probability
35 does not exist, the Commission shall dismiss the complaint with or
36 without a letter of caution. The Commission may consider a letter of
37 caution when deciding the appropriate action to be taken on a
38 subsequent complaint against a judge unless the caution is not
39 relevant to the misconduct alleged in the subsequent complaint.

40 3. If the Commission finds that such a reasonable probability
41 exists, but reasonably believes that the misconduct would be
42 addressed more appropriately through rehabilitation, treatment,
43 education or minor corrective action, the Commission may enter
44 into a deferred discipline agreement with the judge for a definite
45 period as described in NRS 1.468.



1 4. The Commission shall not dismiss a complaint with a letter
2 of caution or enter into a deferred discipline agreement with a judge
3 if:

4 (a) The misconduct of the judge involves the misappropriation
5 of money, dishonesty, deceit, fraud, misrepresentation or a crime
6 that adversely reflects on the honesty, trustworthiness or fitness of
7 the judge;

8 (b) The misconduct of the judge resulted or will likely result in
9 substantial prejudice to a litigant or other person;

10 (c) The misconduct of the judge is part of a pattern of similar
11 misconduct; or

12 (d) The misconduct of the judge is of the same nature as
13 misconduct for which the judge has been publicly disciplined or
14 which was the subject of a deferred discipline agreement entered
15 into by the judge within the immediately preceding 5 years.

16 5. If the Commission finds that such a reasonable probability
17 exists and that formal proceedings are warranted, the Commission
18 shall, in accordance with its procedural rules, designate special
19 counsel to sign under oath and file with the Commission a formal
20 statement of charges against the judge.

21 6. Within 20 days after service of the formal statement of
22 charges, the judge shall file an answer with the Commission under
23 oath. If the judge fails to answer the formal statement of charges
24 within that period, the Commission shall deem such failure to be an
25 admission that the charges set forth in the formal statement:

26 (a) Are true; and

27 (b) Establish grounds for discipline pursuant to NRS 1.4653.

28 7. The Commission shall adopt rules regarding disclosure and
29 discovery after the filing of a formal statement of charges.

30 8. By leave of the Commission, a statement of formal charges
31 may be amended at any time, before the close of the hearing, to
32 allege additional matters discovered in a subsequent investigation or
33 to conform to proof presented at the hearing if the judge has
34 adequate time, as determined by the Commission, to prepare a
35 defense.

36 **Sec. 6.** NRS 1.468 is hereby amended to read as follows:

37 1.468 1. Except as otherwise provided in subsections 2 and 3,
38 if the Commission reasonably believes that a judge has committed
39 an act or engaged in a behavior that would be addressed most
40 appropriately through rehabilitation, treatment, education or minor
41 corrective action, the Commission may enter into an agreement with
42 the judge to defer formal disciplinary proceedings and require the
43 judge to undergo the rehabilitation, treatment, education or minor
44 corrective action.



1 2. The Commission may not enter into an agreement with a
2 judge to defer formal disciplinary proceedings if the Commission
3 has determined, pursuant to NRS 1.467, that there is a reasonable
4 probability ~~{that the evidence available for introduction at a formal~~
5 ~~hearing could clearly and convincingly establish}~~ , *supported by*
6 *clear and convincing evidence, of establishing* grounds for
7 disciplinary action against the judge pursuant to NRS 1.4653.

8 3. The Commission may enter into an agreement with a judge
9 to defer formal disciplinary proceedings only in response to
10 misconduct that is minor in nature.

11 4. A deferred discipline agreement entered into pursuant to this
12 section must be in writing and must specify the conduct that resulted
13 in the agreement. A judge who enters into such an agreement must
14 agree:

15 (a) To the specified rehabilitation, treatment, education or minor
16 corrective action;

17 (b) To waive the right to a hearing before the Commission; and

18 (c) That the agreement will not be protected by confidentiality
19 for the purpose of any subsequent disciplinary proceedings against
20 the judge,

21 ↪ and the agreement must indicate that the judge agreed to the
22 terms set forth in paragraphs (a), (b) and (c). Such an agreement
23 must expressly authorize the Commission to revoke the agreement
24 and proceed with any other disposition of the complaint or formal
25 statement of charges authorized by NRS 1.467 if the Commission
26 finds that the judge has failed to comply with a condition of the
27 agreement.

28 5. The Executive Director of the Commission shall monitor the
29 compliance of the judge with the agreement. The Commission may
30 require the judge to document his or her compliance with the
31 agreement. The Commission shall give the judge written notice of
32 any alleged failure to comply with any condition of the agreement
33 and shall allow the judge not less than 15 days to respond.

34 6. If the judge complies in a satisfactory manner with the
35 conditions imposed in the agreement, the Commission may dismiss
36 the complaint or take any other appropriate action.

37 **Sec. 7. The Commission on Judicial Discipline:**

38 1. Shall apply the amendatory provisions of this act which
39 govern the procedures applicable to proceedings arising under NRS
40 1.425 to 1.4695, inclusive, to any such proceedings that are within
41 the jurisdiction of the Commission and commenced on or after
42 October 1, 2021, whether or not the conduct at issue in such
43 proceedings occurred before October 1, 2021.

44 2. May apply the amendatory provisions of this act which
45 govern the procedures applicable to proceedings arising under



1 NRS 1.425 to 1.4695, inclusive, to any such proceedings that were
2 commenced before October 1, 2021, and are still within the
3 jurisdiction of the Commission and pending before the Commission
4 on October 1, 2021, unless the Commission determines that such an
5 application would be impracticable, unreasonable or
6 unconstitutional under the circumstances, in which case the
7 Commission shall apply the procedures in effect before
8 October 1, 2021.

9 **Sec. 8.** The amendatory provisions of subsection 4 of section 1
10 of this act that limit a regular member of the Commission on
11 Judicial Discipline to serving two 4-year terms apply prospectively
12 on or after October 1, 2021. Terms of service by current or former
13 members of the Commission before October 1, 2021, do not apply
14 towards the two terms a member is permitted to serve under
15 subsection 4 of section 1 of this act. If a current or former member
16 of the Commission begins a new term after October 1, 2021, the
17 new term must be counted as the member's first term for the
18 purpose of subsection 4 of section 1 of this act.



EXHIBIT B

(Reprinted with amendments adopted on April 14, 2021)

FIRST REPRINT

A.B. 43

ASSEMBLY BILL NO. 43—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Requests that the Nevada Supreme Court study certain issues relating to the Commission on Judicial Discipline. (BDR S-393)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the judiciary; requesting that the Nevada Supreme Court study and make recommendations concerning the Commission on Judicial Discipline and compile certain statistics for consideration by the Legislature; 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 in this State. (Nev. Const. Art. 6, § 21; NRS 1.440) The Nevada
4 Constitution also requires the Commission to adopt rules of procedure for the
5 conduct of its hearings and any other procedural rules it deems necessary to carry
6 out its duties. (Nev. Const. Art. 6, § 21) This bill: (1) requests that the Nevada
7 Supreme Court study and make recommendations concerning the procedural and
8 substantive statutes and rules of the Commission on Judicial Discipline; and (2)
9 compile statistics, other than confidential statistics, relating to the work of the
10 Commission for consideration by the Legislature.

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

1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** (Deleted by amendment.)
3 **Sec. 3.** (Deleted by amendment.)



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

2 **Sec. 5.** (Deleted by amendment.)

3 **Sec. 6.** (Deleted by amendment.)

4 **Sec. 7.** (Deleted by amendment.)

5 **Sec. 8.** (Deleted by amendment.)

6 **Sec. 9.** The Legislature hereby respectfully requests that the
7 Nevada Supreme Court:

8 1. Study and make recommendations concerning the
9 procedural and substantive statutes and rules of the Commission on
10 Judicial Discipline; and

11 2. Compile all statistics, other than confidential statistics,
12 relating to the work of the Commission on Judicial Discipline for
13 consideration by the Legislature.

