

Document: O.C.G.A. § 15-1-21

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Current through the 2018 Regular Session of the General Assembly

Official Code of Georgia Annotated TITLE 15. COURTS CHAPTER 1. GENERAL PROVISIONS

§ 15-1-21. Judicial Qualifications Commission created; powers, composition, and appointment; term and removal of member; procedures; confidentiality

- (a)** Pursuant to Article VI, Section VII, Paragraph VI of the Constitution, there is hereby created the Judicial Qualifications Commission, which shall have the power to discipline, remove, and cause involuntary retirement of judges in accordance with such Paragraph. As used in this Code section, the term "commission" means the Judicial Qualifications Commission.
- (b)** The commission shall consist of ten members who shall be subject to confirmation by the Senate.
- (c)** From January 1, 2017, until June 30, 2017, the members of the commission shall be as follows:
- (1)** Two judges of any court of record, appointed by the Supreme Court;
 - (2)** One member of the State Bar of Georgia who shall have been an active status member of the State Bar of Georgia for at least ten years and shall be a registered voter of this state, appointed by the President of the Senate from a list of at least ten nominees from the board of governors of the State Bar of Georgia; provided, however, that if a nominee is not selected from such list, the board of governors shall submit another slate of ten nominees;
 - (3)** One member of the State Bar of Georgia who shall have been an active status member of the State Bar of Georgia for at least ten years and shall be a registered voter of this state, appointed by the Speaker of the House of Representatives from a list of at least ten nominees

from the board of governors of the State Bar of Georgia; provided, however, that if a nominee is not selected from such list, the board of governors shall submit another slate of ten nominees;

(4) One citizen member, who shall be a registered voter of this state but shall not be a member of the State Bar of Georgia, appointed by the Speaker of the House of Representatives;

(5) One citizen member, who shall be a registered voter of this state but shall not be a member of the State Bar of Georgia, appointed by the President of the Senate; and

(6) One member of the State Bar of Georgia, who shall have been an active status member of the State Bar of Georgia for at least ten years and shall be a registered voter of this state, appointed by the Governor to serve as chairperson of the commission.

(d) Effective July 1, 2017, the commission shall be reconstituted. The members serving on the commission immediately prior to July 1, 2017, shall cease to serve on that date, but such prior members shall be eligible for reappointment to succeed themselves or to fill another position on the commission as further set forth in subsection (f) of this Code section. The powers, functions, and duties of the former commission with regard to the investigation, discipline, removal, and involuntary retirement of judges are transferred to the commission created effective July 1, 2017; provided, however, that the formal advisory opinions, pending and former complaints and disciplinary actions, records, orders, contracts, agreements with judges, and rules of the former commission shall be retained by the commission created effective July 1, 2017. Appropriations to the former commission for functions transferred to the commission created effective July 1, 2017, shall be transferred to the commission created effective July 1, 2017, as provided for in Code Section 45-12-90. Personnel previously employed by the former commission and the equipment and facilities of the former commission for functions transferred to the commission created effective July 1, 2017, shall likewise be transferred to the commission created effective July 1, 2017.

(e)

(1) Effective July 1, 2017, the commission shall be divided into a seven-member investigative panel and a three-member hearing panel.

(2) The investigative panel shall be responsible for:

(A) The investigative, prosecutorial, and administrative functions of the commission;

(B) Promulgating rules of the commission as set forth in subsection (j) of this Code section;

(C) The selection of an individual to serve as the director of the commission who shall be an active status member of the State Bar of Georgia and who shall not engage in the practice of law, other than to represent the commission, or serve in a judicial capacity; and

(D) Authorization of employment of such additional staff as the commission deems necessary to carry out the powers assigned to the commission.

(3) The hearing panel shall be responsible for:

- (A)** Adjudicating formal charges filed by the investigative panel;
 - (B)** Making recommendations to the Supreme Court as to disciplinary and incapacity orders;
and
 - (C)** Issuing formal advisory opinions on its own initiative or on the recommendation of the investigative panel, subject to review by the Supreme Court, regarding the Georgia Code of Judicial Conduct.
- (f)** (1) As used in this subsection, the term:
- (A)** "Attorney" means a lawyer who has been an active status member of the State Bar of Georgia for at least ten years and is a registered voter in this state.
 - (B)** "Citizen" means an individual who is neither an attorney nor a judge and who is a registered voter in this state.
 - (C)** "Judge" means an elected or appointed public official who presides over a court of record.
- (2)** The State Bar of Georgia may recommend to the respective appointing authorities a list of the names of individuals for consideration to serve as attorney commission members.
- (3)** (A) The seven members of the commission's investigative panel shall be appointed as follows:
- (i)** One attorney member shall be appointed by the Governor and shall serve a term of four years; provided, however, that the initial appointment shall be for two years, and thereafter, successors to such member shall serve terms of four years;
 - (ii)** Two judge members shall be appointed by the Supreme Court and each shall serve terms of four years; provided, however, that the initial appointments shall be for two and four years, respectively, as designated by the Supreme Court for each appointment, and thereafter, successors to such members shall serve terms of four years;
 - (iii)** Two members, consisting of one attorney and one citizen, shall be appointed by the President of the Senate and each shall serve terms of four years; provided, however, that the initial appointment of the attorney member shall be for four years and the initial appointment of the citizen member shall be for one year, and thereafter, successors to such members shall serve terms of four years; and
 - (iv)** Two members, consisting of one attorney and one citizen, shall be appointed by the Speaker of the House of Representatives and each shall serve terms of four years; provided, however, that the initial appointment of the attorney member shall be for three years and the initial appointment of the citizen member shall be for two years, and thereafter, successors to such members shall serve terms of four years.
- (B)** The investigative panel members shall annually elect a chairperson and vice chairperson for such panel.
- (4)** (A) The three members of the commission's hearing panel shall be appointed as follows:

(i) One citizen member shall be appointed by the Governor for a term of four years and his or her successors shall serve terms of four years; and

(ii) One judge member and one attorney member shall be appointed by the Supreme Court and each shall serve terms of four years; provided, however, that the initial appointment of the judge member shall be for three years and the initial appointment of the attorney member shall be for one year, and thereafter, successors to such members shall serve terms of four years.

(B) The judge member shall serve as the presiding officer of such panel.

(5) All members' initial terms shall begin on July 1, 2017, and their successors' terms shall begin on July 1 following their appointment.

(6) A commission member shall be eligible to serve so long as he or she retains his or her status as an attorney, citizen, or judge, but a vacancy shall be created by operation of law when he or she no longer has the designation for which he or she was appointed. Any vacancy for a member shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term; provided, however, that if the appointing authority fails to fill a vacancy within 60 days of being notified of such vacancy by the commission, the Governor shall appoint a replacement member from the same category of member. Any member of the commission may serve two full terms. Any member appointed pursuant to subsection (c) of this Code section, for an initial term as provided by this subsection, or to fill a vacancy may serve an additional two full terms.

(g)

(1) The names of the appointees required by this Code section shall be submitted by the appointing authorities to the Senate no later than the third Monday in January. Any member appointed to the commission shall serve until the Senate confirms such appointee, and if an individual's name is not submitted by such deadline, he or she shall not be eligible for confirmation.

(2) If an appointee is not confirmed by the Senate, the appointing authority shall promptly submit another appointee's name, notwithstanding the deadline expressed in paragraph (1) of this subsection.

(3) If the Senate is not in session at the time an appointee's term begins or a vacancy is created, an appointee for such term or to fill such vacancy shall be effective until his or her name can be submitted to the Senate and his or her appointment can be confirmed at the next regular session.

(h) Members and staff of the hearing panel shall not engage in any ex parte communications regarding a disciplinary or incapacity matter of a judge, including with members and staff of the investigative panel.

(i)

(1) Each member of the commission shall be entitled to vote on any matter coming before his or her respective panel unless otherwise provided by rules adopted by the commission concerning recusal. The chairperson of the investigative panel and the presiding officer of the hearing panel shall retain a vote on all matters except those in which such chairperson or presiding officer has been recused. No commission member present at a panel meeting shall abstain from voting unless he or she is recused. The rules of the commission shall establish grounds for recusal and the process for allowing a temporary replacement of a commission member in such circumstance.

(2) (A) As used in this paragraph, the term "for cause" shall include indictment for or conviction of a felony or any offense involving moral turpitude; misconduct, malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend three or more panel meetings or hearings in a one-year period without good and sufficient reason; or abstaining from voting, unless recused.

(B) Removal of a panel member for cause shall be by a unanimous vote of all of the appointing authorities for the members of that particular panel.

(3) A quorum of the investigative panel shall require at least four members to be present and shall consist of at least one judge, one attorney, and one citizen. A quorum of the hearing panel shall require all members to be present. A decision by a panel shall be by majority vote of the members present except for minor procedural or administrative matters assigned to the director, chairperson, or presiding officer, as applicable, for a decision as provided by the rules of the commission.

(4) (A) Members of the commission shall serve without compensation but shall receive the same daily expense allowance as members of the General Assembly receive, as set forth in Code Section 28-1-8, for each day such member is in physical attendance at a panel meeting or hearing, plus either reimbursement for actual transportation costs while traveling by public transportation or the same mileage allowance for use of a personal motor vehicle in connection with such attendance as members of the General Assembly receive.

(B) Notwithstanding subparagraph (A) of this paragraph, no member shall receive such expense allowance or travel reimbursement if he or she is entitled to receive an expense allowance, travel reimbursement, or salary for performance of duties as a state employee.

(C) Expense allowances and travel reimbursement shall be paid from moneys appropriated or otherwise available to the commission.

(j) The investigative panel shall promulgate rules for the commission's governance which comport with due process and are not otherwise provided by the Georgia Constitution or this Code section; provided, however, that such rules shall be effective only upon review and adoption by the Supreme Court. Such rules shall allow for a full investigation of a judge only upon the approval of the investigative panel, not upon the request of an individual panel

member or the director. When a commission member receives information relating to the conduct of a judge, such member shall provide such information to the commission's director for appropriate action.

(k)

(1) All information regarding a disciplinary or incapacity matter of a judge shall be kept confidential by the investigative panel and commission staff before formal charges are filed; provided, however, that if prior to filing formal charges such judge and investigative panel agree to a satisfactory disposition of a disciplinary matter other than by a private admonition or deferred discipline agreement, a report of such disposition shall be publicly filed in the Supreme Court.

(2) After the filing and service of formal charges:

(A) With respect to an incapacity matter of a judge, all pleadings, information, hearings, and proceedings shall remain confidential; and

(B) With respect to a disciplinary matter of a judge, all pleadings and information shall be subject to disclosure to the public and all hearings and proceedings shall be open and available to the public except to the extent that such pleadings and information or hearings and proceedings could be properly sealed or closed by a court as provided by law.

(3) With respect to administrative and other matters, all records and information shall be subject to disclosure to the public and all meetings, or portions thereof, shall be open and available to the public except to the extent such records, information, and meetings would:

(A) Disclose disciplinary matters of a judge protected in paragraph (1) of this subsection;

(B) Disclose incapacity matters of a judge protected in paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;

(C) Be considered a matter subject to executive session, if the commission were considered to be an agency under Chapter 14 of Title 50; or

(D) Not be required under Code Section 50-18-72, if the commission were considered to be an agency.

(4) The work product of the commission and its staff and the deliberations of the commission shall remain confidential.

(l) Notwithstanding subsection (k) of this Code section, information regarding a disciplinary or incapacity matter of a judge may be disclosed or the confidentiality of such information may be removed, when:

(1) The privilege of confidentiality has been waived by the individual who was the subject of the commission's investigation; or

(2) The commission's rules provide for disclosure:

(A) In the interest of justice and to protect the public;

(B) When an emergency situation exists; or

- (C)** When a judge is under consideration for another state or federal position.
- (m)** Information submitted to the commission or its staff, and testimony given in any proceeding before the commission or one of its panels, shall be absolutely privileged, and no civil action predicated upon such information or testimony shall be instituted against any complainant, witness, or his or her counsel.
- (n)** A respondent who is recommended for public reprimand, censure, limitation on the performance of judicial duties, suspension, retirement, or removal shall be entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the hearing panel's presiding officer. The hearing panel's recommendation as to an order in a disciplinary or incapacity matter shall be reviewed by the Supreme Court in accordance with its rules and the rules of the commission.
- (o)** When a judge knows that he or she is under investigation by the commission and a commission member is representing a party before such judge, the judge shall be disqualified from presiding over such matter.

History

Code 1981, § 15-1-21, enacted by Ga. L. 2016, p. 806, § 1/HB 808; Ga. L. 2017, p. 157, § 2-2/HB 126.

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