

By: Toth

H.B. No. 5008

A BILL TO BE ENTITLED

AN ACT

relating to conduct of and complaints against current and former judges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 33.0212 and 33.0213, Government Code, are amended to read as follows:

Sec. 33.0212. REPORT AND RECOMMENDATIONS ON FILED COMPLAINTS. (a) As soon as practicable after a complaint is filed with the commission, commission staff shall conduct a preliminary investigation of the filed complaint and draft recommendations for commission action.

(a-1) On completion of the preliminary investigation and submission of recommendations under Subsection (a), commission staff shall provide to the judge who is the subject of the complaint written notice of:

(1) the complaint, the results of the preliminary investigation, and the commission staff's recommendations for commission action regarding the complaint; and

(2) the judge's right to attend each commission meeting at which the complaint is included in the report filed with the commission members under Subsection (a-2).

(a-2) Not later than the 10th business day before a scheduled commission meeting [~~120th day after the date a complaint is filed with the commission~~], commission staff shall prepare and

1 file with each member of the commission a report detailing:

2 (1) each complaint for which a preliminary
3 investigation has been conducted under Subsection (a) but for which
4 the investigation report has not been finalized under Subsection
5 (b);

6 (2) the results of the preliminary investigation of
7 the complaint; and

8 (3) the commission staff's recommendations for
9 commission action regarding the complaint.

10 (b) Not later than the 120th [~~90th~~] day following the date
11 of the first commission meeting at which a complaint is included in
12 the report filed with the commission under Subsection (a-2) [~~staff~~
13 ~~files with the commission the report required by Subsection (a)],~~
14 the commission shall finalize the investigation report and
15 determine any action to be taken regarding the complaint,
16 including:

17 (1) a public sanction;

18 (2) a private sanction;

19 (3) a suspension;

20 (4) an order of education;

21 (5) an acceptance of resignation in lieu of
22 discipline;

23 (6) a dismissal; or

24 (7) an initiation of formal proceedings.

25 (b-1) After the commission meeting at which an
26 investigation report is finalized and an action is determined under
27 Subsection (b), the commission shall provide to the judge who is the

1 subject of a complaint:

2 (1) written notice of the action to be taken regarding
3 the complaint not more than 48 hours after the commission meeting;
4 and

5 (2) as the commission determines appropriate, notice
6 of the action to be taken published on the commission's Internet
7 website not more than 72 hours after the commission meeting.

8 (c) If, because of extenuating circumstances, the
9 commission [staff] is unable to finalize an investigation report
10 and determine the action to be taken regarding a complaint under
11 Subsection (b) [~~provide an investigation report and recommendation~~
12 ~~to the commission]~~ before the 120th day following the date of the
13 first [the complaint was filed with the] commission meeting at
14 which a complaint is included in the report filed with the
15 commission under Subsection (a-2), the commission may order an
16 extension[, ~~the staff shall notify the commission and propose the~~
17 ~~number of days required for the commission and commission staff to~~
18 ~~complete the investigation report and recommendations and finalize~~
19 ~~the complaint. The staff may request an extension] of not more than
20 240 [270] days from the date of the first [the complaint was filed
21 with the] commission meeting at which a complaint is included in the
22 report filed with the commission under Subsection (a-2). [The
23 ~~commission shall finalize the complaint not later than the 270th~~
24 ~~day following the date the complaint was filed with the~~
25 ~~commission.]~~~~

26 (d) [~~The executive director may request that the~~
27 ~~chairperson grant an additional 120 days to the time provided under~~

1 ~~Subsection (c) for the commission and commission staff to complete~~
2 ~~the investigation report and recommendations and finalize the~~
3 ~~complaint.~~

4 ~~[(e)]~~ If the commission orders an extension of time under
5 Subsection (c) ~~[chairperson grants additional time under~~
6 ~~Subsection (d)]~~, the commission must timely inform the legislature
7 of the extension. The commission may not disclose to the
8 legislature any confidential information regarding the complaint.

9 SECTION 2. Section 33.001(b), Government Code, is amended
10 to read as follows:

11 (b) For purposes of Section 1-a, Article V, Texas
12 Constitution, "wilful or persistent conduct that is clearly
13 inconsistent with the proper performance of a judge's duties"
14 includes:

15 (1) wilful, persistent, and unjustifiable failure to
16 timely execute the business of the court, considering the quantity
17 and complexity of the business;

18 (2) wilful violation of a provision of the Texas penal
19 statutes or the Code of Judicial Conduct;

20 (3) persistent or wilful violation of the rules
21 promulgated by the supreme court;

22 (4) incompetence in the performance of the duties of
23 the office;

24 (5) failure to cooperate with the commission; ~~or~~

25 (6) violation of any provision of a voluntary
26 agreement to resign from judicial office in lieu of disciplinary
27 action by the commission; or

1 (7) persistent or wilful violation of Article 17.15,
2 Code of Criminal Procedure.

3 SECTION 3. Section 33.034(a), Government Code, is amended
4 to read as follows:

5 (a) A judge who receives from the commission a public
6 sanction or censure issued by the commission under Section 1-a(8),
7 Article V, Texas Constitution, that would prohibit the judge from
8 service as a visiting judge [~~or any other type of sanction~~] is
9 entitled to a review of the commission's decision as provided by
10 this section. This section does not apply to a decision by the
11 commission to institute formal proceedings.

12 SECTION 4. Section 33.037, Government Code, is amended to
13 read as follows:

14 Sec. 33.037. SUSPENSION PENDING APPEAL OR FORMAL
15 PROCEEDINGS. (a) If a judge who is convicted of a felony or a
16 misdemeanor involving official misconduct appeals the conviction,
17 the commission shall suspend the judge from office without pay
18 pending final disposition of the appeal.

19 (b) If a judge is subject to formal proceedings under
20 Section 1-a(8), Article V, Texas Constitution, the commission shall
21 within 15 days following the appointment of a special master
22 suspend the judge from office without pay pending final disposition
23 unless the special master recommends otherwise.

24 (c) If the commission issues a public reprimand of a judge
25 under Section 1-a(8), Article V, Texas Constitution, for a
26 violation of Section 33.001(b)(7) or 665.052(b)(4), the reprimand
27 must include a 60-day suspension without pay.

1 (d) In the event of a suspension under Subsection (c), the
2 commission shall notify the governor, the lieutenant governor, the
3 speaker of the house of representatives, the presiding officers of
4 the standing committees of each house of the legislature with
5 applicable jurisdiction, and the comptroller of the suspension.

6 SECTION 5. Section 74.055(c), Government Code, is amended
7 to read as follows:

8 (c) To be eligible to be named on the list, a retired or
9 former judge must:

10 (1) have served as an active judge for at least 96
11 months in a district, statutory probate, statutory county, or
12 appellate court;

13 (2) have developed substantial experience in the
14 judge's area of specialty;

15 (3) not have been removed from office;

16 (4) certify under oath to the presiding judge, on a
17 form prescribed by the state board of regional judges, that:

18 (A) the judge has never been either:

19 (i) publicly reprimanded or censured by the
20 State Commission on Judicial Conduct; or

21 (ii) publicly reprimanded, sanctioned, or
22 censured, or any combination of those punishments, more than once,
23 unless the reprimand, sanction, or censure has been reviewed and
24 rescinded by a special court of review under Section 33.034; and

25 (B) the judge:

26 (i) did not resign or retire from office
27 after the State Commission on Judicial Conduct notified the judge

1 of the commencement of a full investigation into an allegation or
2 appearance of misconduct or disability of the judge as provided in
3 Section 33.022 and before the final disposition of that
4 investigation; or

5 (ii) if the judge did resign from office
6 under circumstances described by Subparagraph (i), was not publicly
7 reprimanded or censured as a result of the investigation;

8 (5) annually demonstrate that the judge has completed
9 in the past state fiscal year the educational requirements for
10 active district, statutory probate, and statutory county court
11 judges; and

12 (6) certify to the presiding judge a willingness not
13 to appear and plead as an attorney in any court in this state for a
14 period of two years.

15 SECTION 6. Section 665.052(b), Government Code, is amended
16 to read as follows:

17 (b) In this section, "incompetency" means:

18 (1) gross ignorance of official duties;

19 (2) gross carelessness in the discharge of official
20 duties; ~~or~~

21 (3) inability or unfitness to discharge promptly and
22 properly official duties because of a serious physical or mental
23 defect that did not exist at the time of the officer's election; or

24 (4) persistent or wilful violation of Article 17.15,
25 Code of Criminal Procedure.

26 SECTION 7. As soon as practicable after the effective date
27 of this Act, the State Commission on Judicial Conduct shall adopt

1 rules to implement Section 33.001(b), Government Code, as amended
2 by this Act.

3 SECTION 8. The changes in law made by this Act apply only to
4 an allegation of judicial misconduct received by the State
5 Commission on Judicial Conduct or the legislature on or after the
6 effective date of this Act, regardless of whether the conduct or act
7 that is the subject of the allegation occurred or was committed
8 before, on, or after the effective date of this Act.

9 SECTION 9. Section 33.037, Government Code, as amended by
10 this Act, applies only to a special master appointed to hear a
11 formal proceeding on or after the effective date of this Act.

12 SECTION 10. A former or retired judge on a list maintained
13 by a presiding judge under Section 74.055(a), Government Code, who
14 is ineligible to be named on the list under Section 74.055(c),
15 Government Code, as amended by this Act, shall be struck from the
16 list on the effective date of this Act and may not be assigned to any
17 court on or after the effective date of this Act.

18 SECTION 11. This Act takes effect September 1, 2023.