

By: Deshotel

H.B. No. 2365

A BILL TO BE ENTITLED

AN ACT

relating to the State Commission on Judicial Conduct.

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

SECTION 1. Section 33.0211, Government Code, is amended to read as follows:

§ 33.0211. Informal Complaints

(a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(c) The commission shall conduct a preliminary

1 investigation of the circumstances surrounding an allegation or
2 appearance of misconduct or disability of a judge to determine if
3 the allegation or appearance is unfounded or frivolous.

4 (d) If, after conducting a preliminary investigation under
5 this section, the commission determines that an allegation or
6 appearance of misconduct or disability is unfounded or frivolous,
7 the commission shall terminate the investigation.

8 (e) If, after conducting a preliminary investigation under
9 this section, the commission does not determine that an allegation
10 or appearance of misconduct or disability is unfounded or
11 frivolous, the commission shall file a Formal Complaint pursuant to
12 Section 33.0212 of the Government Code.

13 (f) Investigations of Informal Complaints and proceedings
14 conducted pursuant to a Formal Complaint will remain confidential
15 until and unless the commission decides to issue a public sanction
16 against a judge or to initiate removal proceedings against a judge.

17 SECTION 2. Section 33.0212, Government Code, is created and
18 reads as follows:

19 § 33.0212. Formal Complaints

20 (a) If, after preliminary investigation, the commission
21 does not determine that an informal complaint is unfounded or
22 frivolous, a formal complaint will be filed with the commission.

23 (b) An individual may file with the commission a sworn
24 complaint, on a form prescribed by the commission, alleging that a
25 Judge has violated a rule adopted by, a law administered and
26 enforced by, or a Canon administered and enforced by the
27 commission. If an individual who made an informal complaint

1 against a judge requests that his or her identity be kept
2 confidential, then the Executive Director shall sign the complaint
3 as the complainant provided that the Executive Director has
4 probable cause to believe that a judge violated a rule adopted by, a
5 law administered and enforced by, or a Canon administered and
6 enforced by the commission. The Executive Director or his or her
7 designee may also assist an individual in the preparation of a
8 complaint when the individual does not request that his or her
9 identity be kept confidential.

10 (c) A complaint filed under this section must be in writing
11 and under oath and must set forth in simple, concise, and direct
12 statements:

13 (1) the name of the complainant;

14 (2) the street or mailing address of the complainant
15 (unless the complainant is the Executive Director);

16 (3) the name of each respondent;

17 (4) the position or title of each respondent;

18 (5) the nature of the alleged violation, including the
19 specific rule or provision of law or judicial Canon alleged to have
20 been violated;

21 (6) a statement of the facts constituting the alleged
22 violation and the dates on which or period of time in which the
23 alleged violation occurred; and

24 (7) all documents or other material available to the
25 complainant that are relevant to the allegation, a list of all
26 documents or other material within the knowledge of the complainant
27 and available to the complainant that are relevant to the

1 allegation but that are not in the possession of the complainant,
2 including the location of the documents, if known, and a list of all
3 documents or other material within the knowledge of the complainant
4 that are unavailable to the complainant and that are relevant to the
5 complaint, including the location of the documents, if known.

6 (c) The complaint must be accompanied by an affidavit
7 stating that the information contained in the complaint is either
8 correct or that the complainant has good reason to believe and does
9 believe that the violation occurred. If the complaint is based on
10 information and belief, the complaint shall state the source and
11 basis of the information and belief. The complainant may swear to
12 the facts by oath before a notary public or other authorized
13 official.

14 (d) The complaint must state on its face an allegation that,
15 if true, constitutes violated a rule adopted by, a law administered
16 and enforced by, or a Canon administered and enforced by the
17 commission.

18 (e) Nothing in this chapter shall preclude an individual
19 from filing a sworn complaint directly without having made an
20 informal complaint.

21 SECTION 3. Section 33.022, Government Code, is amended to
22 read as follows:

23 § 33.022. ~~Investigations and~~ Formal Proceedings.

24 ~~(a) The commission may conduct a preliminary investigation~~
25 ~~of the circumstances surrounding an allegation or appearance of~~
26 ~~misconduct or disability of a judge to determine if the allegation~~
27 ~~or appearance is unfounded or frivolous.~~

1 ~~(b) If, after conducting a preliminary investigation under~~
2 ~~this section, the commission determines that an allegation or~~
3 ~~appearance of misconduct or disability is unfounded or frivolous,~~
4 ~~the commission shall terminate the investigation.~~

5 ~~(c) If, after conducting a preliminary investigation under~~
6 ~~this section, the commission does not determine that an allegation~~
7 ~~or appearance of misconduct or disability is unfounded or~~
8 ~~frivolous, the commission:~~

9 (1) If after the investigation has been completed the
10 commission concludes that formal proceedings will be instituted,
11 the matter shall be entered in a docket to be kept for that purpose
12 and written notice of the institution of formal proceedings shall
13 be served on the judge without delay. The proceedings shall be
14 entitled:

15 "Before the State Commission on Judicial Conduct
16 Inquiry Concerning a Judge, No. _____"

17 and, the commission shall:

18 (A) ~~conduct a full investigation of the~~
19 ~~circumstances surrounding the allegation or appearance of~~
20 ~~misconduct or disability; and~~

21 ~~(B)~~ notify the judge in writing of:

22 ~~(i)~~ the commencement of ~~the investigation~~
23 formal proceedings under this section; and

24 ~~(ii)~~ the nature of the allegation or
25 ~~appearance of misconduct or disability being investigated; and~~

26 (B) provide a copy of the sworn complaint to the
27 judge.

1 (2) and it may:

2 (A) order the judge to:

3 (i) submit a written response to the sworn
4 complaint or allegation or appearance ~~of misconduct~~ or disability;
5 or

6 (ii) appear ~~informally~~ before the
7 commission to provide testimony;

8 (B) order the deposition of any person; or

9 (C) request the complainant to appear informally
10 before the commission.

11 ~~(d)~~ (b) The commission shall serve an order issued by the
12 commission under Subsection ~~(e)~~ (a)(2)(B) on the person who is the
13 subject of the deposition and the judge who is the subject of the
14 investigation. The order must be served within a reasonable time
15 before the date of the deposition.

16 ~~(e)~~ (c) The commission may file an application in a district
17 court to enforce an order issued by the commission under Subsection
18 ~~(e)~~ (a)(2)(B).

19 ~~(f)~~ (d) The commission shall notify the judge in writing of
20 the disposition of a formal proceedings conducted by the commission
21 under this section.

22 ~~(g) If after the investigation has been completed the~~
23 ~~commission concludes that formal proceedings will be instituted,~~
24 ~~the matter shall be entered in a docket to be kept for that purpose~~
25 ~~and written notice of the institution of formal proceedings shall~~
26 ~~be served on the judge without delay. The proceedings shall be~~
27 ~~entitled:~~

1 ~~"Before the State Commission on Judicial Conduct Inquiry~~
2 ~~Concerning a Judge, No. _____"~~

3 ~~(h) (e) The notice shall specify in ordinary and concise~~
4 ~~language the charges against the judge and the alleged facts on~~
5 ~~which the charges are based and the specific standards contended to~~
6 ~~have been violated.~~ The judge is entitled to file a written answer
7 to the charges against the judge not later than the 15th day after
8 the notice is served on the judge, and the notice shall so advise
9 the judge.

10 ~~(i) (f) The notice,~~ which shall include the formal
11 complaint, shall be served on the judge or the judge's attorney of
12 record by personal service of a copy of the notice by a person
13 designated by the chairperson. The person serving the notice shall
14 promptly notify the clerk in writing of the date on which the notice
15 was served. If it appears to the chairperson on affidavit that,
16 after reasonable effort during a period of 10 days, personal
17 service could not be had, service may be made by mailing by
18 registered or certified mail copies of the notice addressed to the
19 judge at the judge's chambers or at the judge's last known residence
20 in an envelope marked "personal and confidential." The date of
21 mailing shall be entered in the docket.

22 ~~(j) (g) A judge at the judge's request may elect to have any~~
23 ~~hearing open to the public or to persons designated by the judge.~~
24 The right of a judge to an open hearing does not preclude placing
25 witnesses under the rule as provided by the Texas Rules of Civil
26 Procedure.

27 ~~(k) (h) A judge is not entitled to a jury trial in formal~~

1 proceedings before a special master or the commission.

2 ~~(1)~~ (i) The commission shall adopt procedures for hearing
3 from judges and complainants appearing before the commission. All
4 evidence that will be considered by the commission in formal
5 proceedings against a judge, including but not limited to all
6 documentary evidence, all witness statements, all video recordings
7 and all audio recordings, shall be provided to the judge not later
8 than 30 days before the hearing on the formal complaint. The
9 procedures shall ensure the confidentiality of a complainant's
10 identity as provided under Section 33.0321.

11 (j) Where a formal complaint is based primarily upon the
12 conduct of a judge in court, whether in the court in which the judge
13 presides or in a court where a judge is a party or witness, and a
14 record of the proceedings was made, the commission shall procure a
15 transcript of the proceedings and, if such exist, an audio or video
16 recording of the proceedings for consideration as evidence by the
17 commission, and the judge shall not have a right to confront or
18 cross examine the complainant.

19 (k) Where a formal complaint is based primarily upon the
20 sworn complaint of an individual alleging misconduct outside of
21 official proceedings, or alleging misconduct to have occurred in a
22 court that is not a court of record and no record exists, or
23 alleging misconduct that occurred in a court of record but the
24 conduct itself would not likely be reflected in the record, then the
25 judge who is the subject of the formal complaint shall have a
26 reasonable, restricted right to confront and cross examine evidence
27 and witnesses against him. This right of confrontation and cross

1 examination can be accomplished through written interrogatories or
2 requests for admission, the answers to which shall be verified
3 under oath, or through any other procedures developed by the
4 commission which are reasonably likely to reveal the whole truth of
5 a matter and are reasonably likely to reveal whether a complaining
6 witness is motivated by malice, vindictiveness, intolerance,
7 prejudice, bias or jealousy. Any procedures promulgate by the
8 commission under this section shall be provided to the judge with
9 the copy of the formal complaint.

10 SECTION 4. This Act takes effect September 1, 2005.

11 SECTION 5. The importance of this legislation and the
12 crowded condition of the calendars in both houses create an
13 emergency and an imperative public necessity that the
14 constitutional rule requiring bills to be read on three separate
15 days in each house be suspended, and this rule is hereby suspended.