

By: Huffman, et al.
(Leach)

S.B. No. 21

Substitute the following for S.B. No. 21:

By: Schofield

C.S.S.B. No. 21

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the discipline of judges by the State Commission on
3 Judicial Conduct and the legislature.

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

5 SECTION 1. Section 33.001(b), Government Code, is amended
6 to read as follows:

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

11 (1) wilful, persistent, and unjustifiable failure to
12 timely execute the business of the court, considering the quantity
13 and complexity of the business;

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

16 (3) persistent or wilful violation of the rules
17 promulgated by the supreme court;

18 (4) incompetence in the performance of the duties of
19 the office;

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

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

24 (7) persistent or wilful violation of Article 17.15,

1 Code of Criminal Procedure.

2 SECTION 2. Section 33.0212, Government Code, is amended to
3 read as follows:

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

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

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

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

19 (a-2) Not later than the 10th business day before a
20 scheduled commission meeting [~~120th day after the date a complaint~~
21 ~~is filed with the commission]~~, commission staff shall prepare and
22 file with each member of the commission a report detailing:

23 (1) each complaint for which a preliminary
24 investigation has been conducted under Subsection (a) but for which
25 the investigation report has not been finalized under Subsection
26 (b);

27 (2) the results of the preliminary investigation of

1 the complaint; and

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

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

- 11 (1) a public sanction;
- 12 (2) a private sanction;
- 13 (3) a suspension;
- 14 (4) an order of education;
- 15 (5) an acceptance of resignation in lieu of
16 discipline;
- 17 (6) a dismissal; or
- 18 (7) an initiation of formal proceedings.

19 (b-1) After the commission meeting at which an
20 investigation report is finalized and an action is determined under
21 Subsection (b), the commission shall provide to the judge who is the
22 subject of a complaint:

23 (1) written notice of the action to be taken regarding
24 the complaint not more than five business days after the commission
25 meeting; and

26 (2) as the commission determines appropriate,
27 published notice of the action to be taken by posting the notice on

1 the commission's Internet website not more than seven business days
2 after the commission meeting.

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

21 (d) [~~The executive director may request that the~~
22 ~~chairperson grant an additional 120 days to the time provided under~~
23 ~~Subsection (c) for the commission and commission staff to complete~~
24 ~~the investigation report and recommendations and finalize the~~
25 ~~complaint.~~

26 [~~e~~] If the commission orders an extension of time under
27 Subsection (c) [chairperson grants additional time under

1 ~~Subsection (d)]~~, the commission must timely inform the legislature
2 of the extension. The commission may not disclose to the
3 legislature any confidential information regarding the complaint.

4 SECTION 3. Section 33.0213, Government Code, is amended to
5 read as follows:

6 Sec. 33.0213. NOTIFICATION OF LAW ENFORCEMENT AGENCY
7 INVESTIGATION. On notice by any law enforcement agency
8 investigating an action for which a complaint has been filed with
9 the commission, the commission:

10 (1) may place the commission's complaint file on hold
11 and decline any further investigation that would jeopardize the law
12 enforcement agency's investigation; or

13 (2) shall [~~The commission may~~] continue an
14 investigation that would not jeopardize a law enforcement
15 investigation regarding the conduct subject to the complaint and
16 may issue a censure or sanction based on the complaint.

17 SECTION 4. Section 33.034, Government Code, is amended by
18 amending Subsection (a) and adding Subsection (j) to read as
19 follows:

20 (a) A judge who receives from the commission a sanction or
21 censure issued by the commission under Section 1-a(8), Article V,
22 Texas Constitution, may request [~~or any other type of sanction is~~
23 ~~entitled to~~] a review of the commission's decision as provided by
24 this section. This section does not apply to a decision by the
25 commission to institute formal proceedings.

26 (j) If the commission issues a public reprimand of a judge
27 based on the judge's persistent or wilful violation of Article

1 17.15, Code of Criminal Procedure, the commission shall send notice
2 of the reprimand to:

- 3 (1) the governor;
- 4 (2) the lieutenant governor;
- 5 (3) the speaker of the house of representatives;
- 6 (4) the presiding officers of each legislative
7 standing committee with jurisdiction over the judiciary;
- 8 (5) the chief justice of the supreme court;
- 9 (6) the Office of Court Administration of the Texas
10 Judicial System; and
- 11 (7) the presiding judge of the administrative judicial
12 region in which the court the reprimanded judge serves is located.

13 SECTION 5. Section 33.037, Government Code, is amended to
14 read as follows:

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

20 (b) Not later than the 21st day after the date the
21 commission initiates formal proceedings against a judge based on
22 the judge's persistent or wilful violation of Article 17.15, Code
23 of Criminal Procedure, the commission shall recommend to the
24 supreme court that the judge be suspended from office pursuant to
25 Section 1-a, Article V, Texas Constitution.

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

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

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

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

8 (3) not have been removed from office;

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

11 (A) the judge has never been publicly reprimanded
12 or censured by the State Commission on Judicial Conduct, excluding
13 any reprimand or censure that was reviewed and rescinded by a
14 special court of review under Section 33.034;

15 (B) the judge has not received more than one of
16 any other type of public sanction, excluding any sanction that was
17 reviewed and rescinded by a special court of review under Section
18 33.034; and

19 (C) [~~(B)~~] the judge:

20 (i) did not resign or retire from office
21 after the State Commission on Judicial Conduct notified the judge
22 of the commencement of a full investigation into an allegation or
23 appearance of misconduct or disability of the judge as provided in
24 Section 33.022 and before the final disposition of that
25 investigation; or

26 (ii) if the judge did resign from office
27 under circumstances described by Subparagraph (i), was not publicly

1 reprimanded or censured as a result of the investigation;

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

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

9 SECTION 7. Section 665.052(b), Government Code, is amended
10 to read as follows:

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

12 (1) gross ignorance of official duties;

13 (2) gross carelessness in the discharge of official
14 duties; ~~or~~

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

18 (4) persistent or wilful violation of Article 17.15,
19 Code of Criminal Procedure.

20 SECTION 8. As soon as practicable after the effective date
21 of this Act, the State Commission on Judicial Conduct shall adopt
22 rules to implement Section 33.001(b), Government Code, as amended
23 by this Act.

24 SECTION 9. Sections 33.001(b) and 665.052(b), Government
25 Code, as amended by this Act, apply only to an allegation of
26 judicial misconduct received by the State Commission on Judicial
27 Conduct or the legislature on or after the effective date of this

1 Act, regardless of whether the conduct or act that is the subject of
2 the allegation occurred or was committed before, on, or after the
3 effective date of this Act.

4 SECTION 10. A former or retired judge on a list maintained
5 by a presiding judge under Section 74.055(a), Government Code, who
6 is ineligible to be named on the list under Section 74.055(c),
7 Government Code, as amended by this Act, shall be struck from the
8 list on the effective date of this Act and may not be assigned to any
9 court on or after the effective date of this Act.

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