

By Mr. Brownell of Quincy, petition of Thomas F. Brownell relative to revising procedures for the Commission on Judicial Conduct. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT RELATIVE TO THE PROCEDURES FOR THE COMMISSION ON JUDICIAL CONDUCT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 211C of the General Laws is hereby amended by
2 striking out section 2 as appearing in the 1984 Official Edition,
3 and inserting in place thereof the following: —

4 Section 2(a). Notwithstanding any other provision of the law,
5 the commission may investigate upon complaint of any person,
6 including its own membership, the action of any person, including
7 its own membership, the action of any judge that may, by
8 consequence of willful misconduct in office, willful or persistent
9 failure to perform his duties, habitual intemperance or other
10 conduct prejudicial to the administration of justice, bring the
11 judicial office into disrepute or constitute a breach of the Code
12 of Judicial Conduct as promulgated by the supreme judicial court.

13 (b) Any complaint of whatever nature, shall be made to the
14 commission or by the commission in writing, and the executive
15 secretary of the commission shall mail or deliver to the judge
16 complained against a copy of said complaint, and copies of any
17 other documents that may relate to the complaint, and shall
18 inform said judge of his rights under this chapter within twenty-
19 one days from the time said complaint has been received by the
20 commission. The commission may, however, dismiss any such
21 complaint within twenty-one days of its receipt and shall notify
22 said judge and complainant that such complaint has been
23 dismissed.

24 (c) Every complaint shall be signed by the complainant under
25 the pains and penalties of perjury.

26 (d) Every complainant shall be required to state in the
27 complaint whether or not he matter complained about is the
28 subject of appeal and whether an appeal will be entered. In the
29 event the answer to that question by the complainant is in the
30 affirmative, the commission may delay considering the complaint
31 until termination of the appeal. The judge and complainant shall
32 be notified by the commission that the complaint will either be
33 considered forthwith or delayed until the termination of the
34 appeal.

35 (e) Upon receipt of the complaint made in writing and signed
36 under the pains and penalties of perjury, the commission may
37 conduct an initial inquiry to determine whether sufficient cause
38 exists to conduct a formal investigation. No formal investigation
39 to determine whether probable cause exists to charge a judge with
40 any of the actions set forth in subsection (a) shall be undertaken
41 by said commission unless and until the commission by a majority
42 vote has recommended that an investigation of a particular
43 complaint be conducted. No probable cause shall be determined
44 until the judge has responded to the complaint in writing or thirty
45 days from the mailing or delivery of said complaint to the judge,
46 whichever is less. The commission may request that special
47 counsel to conduct said investigation be appointed by the supreme
48 judicial court.

49 No formal proceedings, as described in subsection (j), shall be
50 instituted by said commission unless and until the commission,
51 by a majority vote, has determined probable cause. The
52 commission may, at any time resolve a complaint informally.

53 In the event the commission determines that no probable cause
54 exists to charge a judge with any such actions set forth in
55 subsection (a) the commission shall notify the judge and the
56 complainant in writing, that the complaint has been dismissed and
57 the reason for its dismissal or if said complaint is resolved
58 informally, the commission shall so notify the judge and the
59 complainant in writing.

60 (f) Except where the commission determines otherwise for
61 good cause, the commission shall not deal with complaints arising
62 out of acts or omissions occurring more than one year prior to

63 the date of the complaint, provided that, when the last episode
64 of an alleged pattern of recurring judicial conduct arises within
65 the one year period, the committee may consider all prior acts
66 or omissions related to such an alleged pattern of conduct.

67 (g) The commission shall adopt rules and submit said rules to
68 the supreme judicial court for its approval and the provision of
69 chapter thirty A shall not apply to said rules. Any amendment
70 to said rules shall likewise be submitted to the supreme judicial
71 court for approval and neither the rules originally adopted nor
72 any amendment thereto shall take effect until so approved.

73 (h) Subject to the rules of said commission, the commission
74 shall have the power to subpoena witnesses and documents, to
75 order depositions to be taken, to administer oaths and
76 affirmation, to compel testimony and shall have such additional
77 powers as are necessary and proper to obtain information and to
78 conduct hearings.

79 (i) All commission proceedings shall be confidential, and all
80 employees shall be bound by such confidentiality of all its
81 proceedings, unless and until the commission has determined that
82 probable cause exists and has filed formal charges against a judge.
83 Upon the filing of formal charges against a judge by the
84 commission all subsequent proceedings shall be open to the
85 public, unless the complainant, the judge and the commission
86 agree that further proceedings should remain confidential. All
87 members and employees shall be bound by such confidentiality.

88 (j) Upon completion of any investigation, the commission may
89 dismiss or informally resolve the complaint or file formal charges
90 against the judge. With respect to those complaints where the
91 commission finds probable cause exists and that a hearing is
92 warranted, the parties shall be heard and permitted to present
93 evidence, subpoena and cross-examine witnesses. The parties shall
94 be entitled to discovery at a reasonable time prior to the hearing.
95 If formal charges have been filed against a judge the commission,
96 the commission shall forward its final recommendation for the
97 disposition of the matter with a statement of its reasons to the
98 supreme judicial court in each case for its consideration and
99 further action, if any. Formal proceedings under this chapter shall
100 at all times conform to the applicable Massachusetts rules of
101 evidence.

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