

HOUSE No. 6263

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 29, 1980.

The committee on the Judiciary, to whom was referred the petition (accompanied by bill, House No. 1687) of Daniel F. Pokaski for legislation to make certain changes in the Commission on Judicial Conduct, reports recommending that the accompanying bill (House, No. 6263) ought to pass.

For the committee,

MICHAEL F. FLAHERTY

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT MAKING CERTAIN CHANGES IN 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 SECTION 1. Chapter 211c of the General Laws, as inserted by
2 section 114 of Chapter 478 of the Acts of 1978 is hereby stricken
3 therefrom and the following inserted in place thereof: —

CHAPTER 211C

COMMISSION ON JUDICIAL CONDUCT

6 There shall be a commission on judicial conduct consisting of
7 nine members. Four judges shall be members of said commission.
8 One justice shall be elected from and among the justices of the
9 Superior Court department, one Justice shall be elected from and
10 among the justices of the Probate and Family Court department,
11 one justice shall be elected from and among the justices of the land
12 court department, the housing court department and the juvenile
13 court department and one justice shall be elected from and among
14 the justices of the Boston Municipal Court department and the
15 District Court department. The judges shall be elected for a term of
16 three years. The first elections shall be conducted on the tenth
17 Monday following the effective date of this act and on the first
18 Monday in October in each third year thereafter.

19 Three members of the bar shall be appointed by the chief admi-
20 nistrative justice of the trial court, none of whom shall be members
21 of the bar. The members of the commission shall serve without
22 compensation, but shall be reimbursed for all expenses reasonably
23 incurred by them in the performance of their duties. Commission
24 membership shall terminate if a member ceases to be qualified for
25 his appointment. A vacancy shall be filled by the appointing power
26 for the remainder of the term.

27 Members initially appointed hereunder by the chief administra-
28 tive justice and the governor shall serve respectively for one, two

29 and three years from the dates of their appointments. Upon the
30 expiration of the term of office of any member, his successor shall
31 be appointed in the manner aforesaid for a term of three years. A
32 chairman shall be elected from among the members.

33 The provisions of Chapter 211, Section 3 notwithstanding, other
34 than in an impeachment or address proceeding, the commission
35 shall be the only body or agency authorized and empowered to
36 investigate misconduct of a judge alleged to have occurred while
37 holding judicial office, and no judge shall be disbarred or involun-
38 tarily relieved from exercising his judicial duties pursuant to his
39 commission, until or unless he is removed from office by address or
40 impeachment.

41 There shall be a counsel to the commission appointed by a
42 majority of the members of the commission with such duties as the
43 commission shall, by its rules, establish. He shall be paid such
44 compensation as is appropriate therefor.

45 The commission may investigate, upon complaint of any person,
46 the action of any judge that may, by consequence of willful miscon-
47 duct in office, willful or persistent failure to perform his duties,
48 habitual intemperance or other conduct prejudicial to the adminis-
49 tration of justice, bring the judicial office into disrepute or consti-
50 tute a breach of the Canons of Judicial Ethics as promulgated by
51 the supreme judicial court.

52 Any complaint of whatever nature shall be made to the commis-
53 sion in writing and the executive secretary of the commission shall
54 mail or deliver to the judge complained against a copy of said
55 complaint and copies of any other documents which may relate to
56 the complaint and shall inform said judge of his rights under this
57 chapter within twenty-one days from the time said complaint has
58 been received by the commission. The failure to provide a copy as
59 required under this section shall constitute an automatic dismissal
60 of the complaint and the commission shall notify the judge com-
61 plained against in writing by mail or delivery with a statement
62 concerning said complaint and its dismissal by the commission as
63 required under this section. The commission may however dismiss
64 any such complaint within twenty-one days of its receipt and shall
65 notify said judge that such complaint has been dismissed. Any
66 attorney who assists any person in the preparation of the written

67 complaint within twenty-one days of its receipt and shall notify
68 said judge that such complaint has been dismissed. Any attorney
69 who assists any person in the preparation of the written complaint
70 shall advise the commission of his involvement in the preparation
71 of said complaint and said notice shall contain a statement of his
72 knowledge of all of the contents of said complaint.

73 Said commission's authority does not extend to the review of
74 findings of fact, rulings of law or the exercise of discretion perti-
75 nent thereto by judges. Complainants merely dissatisfied with
76 judicial decisions shall be advised by said commission that the said
77 commission's authority is limited to investigating allegations of
78 misconduct and that said commission cannot usurp the purpose of
79 established appellate processes.

80 Every complaint shall be filed by the complainant under pains
81 and penalties of perjury and shall allege that the act or acts com-
82 plained of as judicial misconduct and the factual bases therefor are
83 based upon the personal knowledge of the complainant. Every
84 complaint must specify the date or dates on or between which each
85 specific allegation of misconduct is alleged to have occurred.

86 Every complainant shall be required to state in the complaint
87 whether or not the matter complained about is the subject of
88 appeal and whether an appeal will be entered. In the event the
89 answer to that question by the complainant is in the affirmative,
90 the commission may delay considering the complaint until termi-
91 nation of the appeal. A judge shall be notified by the commission
92 that the complaint will either be considered forthwith or delayed
93 until the termination of the appeal.

94 Prior to the determination to commence an investigation of a
95 complaint, the judge shall be given thirty days notice of such
96 complaint and shall within such time have the right to respond, in
97 writing, to the complaint. No investigation shall be undertaken by
98 said commission unless and until the judge has responded in writ-
99 ing or failed to do so and the commission, by a majority vote has
100 recommended that an investigation of a particular complaint be
101 conducted by counsel to the commission. Said investigation shall
102 be confined to those allegations of misconduct, and only those, set
103 forth in the complaint. In the course of such an investigation, the
104 judge may refuse to be deposed and or to turn over any documents
105 or papers, and such shall not be construed judicial misconduct,

106 without prejudice to the judge's being able to testify if he desires and
107 to produce documents at any hearing based on formal charges. The
108 exercise by a judge at any stage in the investigation or hearing, of
109 his right against self-incrimination shall not be the basis of a
110 separate complaint, disbarment, impeachment or address.

111 If the judge files a motion to dismiss the complaint or otherwise
112 contests the validity of the complaint or parts thereof, the commis-
113 sion shall hold a hearing at which time the judge may personally or
114 by counsel present evidence and/or arguments of law. At such
115 hearing, the commission shall be represented by its counsel. A
116 transcript shall be kept of the proceedings and unless the commis-
117 sion dismisses the complaint, it shall file written findings upon
118 which its decision not to dismiss are based. Such decision shall be
119 summarily reviewed upon petition to a single justice of the supreme
120 judicial court and all further proceedings stayed pending his deci-
121 sion. In the event that the commission does not render a decision
122 within thirty days from the close of the hearing contesting the
123 validity of the complaint, the commission shall dismiss the com-
124 plaint with prejudice and notify the judge of such dismissal.

125 Except where the commission determines in writing that the facts
126 upon which a complaint was based were not known, or in the
127 exercise of due diligence, could not have been known, the commis-
128 sion shall not deal with complaints arising out of acts or omissions
129 occurring more than one year prior to the date of the complaint,
130 provided that, when the last episode of an alleged pattern of
131 recurring judicial conduct arises within the one year period, the
132 committee may consider all prior acts or omissions related to such
133 an alleged pattern of conduct.

134 When allegations of misconduct are based upon conduct or
135 proceedings in open court, no complaint shall be accepted or
136 investigated unless a transcript or tape of the proceedings is filed
137 with the complaint, absent a showing that none is available.

138 Allegations of misconduct based on media reports shall not be
139 accepted or investigated unless accompanied by an affidavit setting
140 forth the sources of media information by name or other specific
141 documentation of sources.

142 The commission shall adopt rules and shall submit said rules to
143 the joint senate and house committee on the judiciary for its

144 approval and the provisions of chapter thirty A shall not apply to
145 said rules. Any amendment to said rules likewise be submitted to
146 the joint senate and house committee on the judiciary for approval
147 and neither the rules originally adopted nor any amendment there-
148 to shall take effect until so approved.

149 Subject to the rules of said commission, the commission shall
150 have the power to subpoena witnesses and documents, to order
151 depositions be taken, to administer oaths and affirmations, to
152 compel testimony and shall have such additional powers as are
153 necessary and proper to obtain information and to conduct hear-
154 ings. All commission proceedings shall be confidential and all
155 employees shall be bound by such confidentiality at all times and
156 the commission rules shall provide for the confidentiality of all its
157 proceedings.

158 With respect to those complaints where the commission finds
159 sufficient cause exists and that a hearing is warranted, the com-
160 plainant shall be heard and the judge shall be heard and permitted
161 to present evidence, subpoena and cross-examine witnesses. Upon
162 completion of any investigation, the commission shall recommend
163 an appropriate disposition of the matter under investigation with a
164 statement of its reasons and shall forward its final recommenda-
165 tion with a statement of its reasons to the complainant and to the
166 supreme judicial court in each case for its consideration and further
167 action, if any.

168 Any judge against whom a complaint has been filed shall be
169 entitled to be represented at every stage in any proceeding before
170 the commission and or the supreme judicial court by counsel of his
171 choice, said counsel to be compensated by the Commonwealth in an
172 amount including legal fees and expenses as may be approved by
173 the chief administrative judge of the trial court.

174 The commission shall appoint an executive secretary who shall
175 serve at the pleasure of the commission. The executive secretary
176 shall receive an annual salary of twenty-five thousand dollars and
177 such expenses as are approved by the commission and which are
178 incurred by him in the discharge of his duties. Such executive
179 secretary shall devote his entire time during ordinary business
180 hours to his duties and shall not directly or indirectly engage in the
181 practice of law.

182 The commission shall be provided with adequate offices and
183 may appoint such other assistants, investigators and clerical assist-
184 ants which are determined necessary to carry out the provisions of
185 this chapter, subject to appropriation. The commission shall be
186 allowed for such purposes annually such amount as shall be ap-
187 propriated by the general court, to be paid by the commonwealth
188 upon the certification of the chairman.

189 The commission shall submit annually to the general court and
190 the supreme judicial court a report of its activities together with
191 recommendations. This report shall be a matter of public record
192 and shall be printed as a public document.

1 SECTION 2. The provisions of this act shall be deemed to be
2 severable and any holding by any court of competent jurisdiction
3 that any provision hereof is invalid shall not invalidate any of the
4 other provisions hereof.

