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GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS15158-ND-35A

Short Title:	Restore NC Bar Appoint's/Judicial Discipline.	(Public)
Sponsors:	Senator Everitt (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REINSTATE STATE BAR COUNCIL APPOINTMENTS TO THE JUDICIAL STANDARDS COMMISSION AND TO REINSTATE FORMER PROVISIONS REGARDING DISCIPLINARY PROCEDURES FOR JUSTICES AND JUDGES.

The General Assembly of North Carolina enacts:

REINSTATE STATE BAR COUNCIL APPOINTMENTS TO THE JUDICIAL STANDARDS COMMISSION

SECTION 1.(a) G.S. 7A-375(a) reads as rewritten:

"(a) Composition. – The Judicial Standards Commission shall consist of the following residents of North Carolina:

…

(4) Four ~~judges~~ members of the State Bar who have actively practiced in the courts of the State for at least 10 years, appointed by the ~~General Assembly in accordance with G.S. 120-121, selected as follows:~~State Bar Council.

~~a. One district court judge recommended by the President Pro Tempore of the Senate.~~

~~b. One district court judge recommended by the Speaker of the House of Representatives.~~

~~c. One superior court judge recommended by the President Pro Tempore of the Senate.~~

~~d. One superior court judge recommended by the Speaker of the House of Representatives.~~

…."

SECTION 1.(b) This section is effective when it becomes law and shall result in the immediate conclusion of the terms of each of the four members of the Judicial Standards Commission previously appointed by the General Assembly pursuant to G.S. 7A-375(a)(4). These four seats on the Judicial Standards Commission shall then be filled for new terms by the State Bar Council pursuant to G.S. 7A-375(a)(4), as amended by subsection (a) of this section.

REINSTATE FORMER PROVISIONS REGARDING DISCIPLINARY PROCEDURES FOR JUSTICES AND JUDGES

SECTION 2.(a) G.S. 7A-374.2 reads as rewritten:

"**§ 7A-374.2. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

…

(7) "Public reprimand" means a written action of the Commission issued upon a finding by the ~~Supreme Court, based upon a written recommendation by the~~ Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is ~~minor.~~ minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court. A public reprimand may require that the judge follow a corrective course of action.

…."

SECTION 2.(b) G.S. 7A-376 reads as rewritten:

"**§ 7A-376. Grounds for discipline by Commission; ~~public reprimand,~~ censure, suspension, or removal by the Supreme Court.**

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of ~~public reprimand,~~ censure, suspension, or removal, may issue to the judge a private letter of ~~caution.~~caution or may issue to the judge a public reprimand.

(b) Upon recommendation of the Commission, the Supreme Court may ~~issue a public reprimand,~~ censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

…."

SECTION 2.(c) G.S. 7A-377(a4) is reenacted as it existed immediately before its repeal.

SECTION 2.(d) G.S. 7A-377, as amended by subsection (c) of this section, reads as rewritten:

"**§ 7A-377. Procedures.**

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission shall not make an investigation, whether initiated upon its own motion or by written complaint of a citizen of this State, when the motion or complaint is based substantially on a legal ruling by a district or superior court judge and the legal ruling has not yet been reviewed and ruled on by either the North Carolina Court of Appeals or the North Carolina Supreme Court. The Commission is limited to reviewing judicial conduct, not matters of law. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for ~~public reprimand,~~ censure, suspension, or removal unless he has been given a hearing affording due process of law.

…

(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.

(a5) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, ~~remain~~ are not confidential. Disciplinary hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to ~~issue a public reprimand,~~ censure, suspend, or remove any judge. A respondent who is recommended for ~~public reprimand,~~ censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. The respondent is also entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of ~~public reprimand,~~ censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

~~(a6) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme Court, the notice and statement of charges filed by the Commission along with the answer and all other pleadings, and recommendations of the Commission to the Supreme Court along with the record filed in support of such recommendations, are no longer confidential.~~

…."

SECTION 2.(e) Article 30 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-378.1. Censure, suspension, or removal of justice of Supreme Court.**

(a) The recommendation of the Judicial Standards Commission for censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for censure, suspension, or removal of any judge.

(b) The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chair of the Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service."

SECTION 2.(f) This section is effective when it becomes law and applies to disciplinary actions taken against justices or judges on or after that date, including disciplinary actions taken in proceedings which began prior to that date.

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.