

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Gordon**

A Bill

ACT 1078 OF 1993
SENATE BILL 781

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE 16-10-404 TO CONFORM THE
STATUTE WITH THE PROCEDURAL RULES OF THE ARKANSAS JUDICIAL
DISCIPLINE AND DISABILITY COMMISSION AND TO EXPAND THE
EXCEPTION TO THE CONFIDENTIALITY REQUIREMENT IN CERTAIN
CIRCUMSTANCES; AND FOR OTHER PURPOSES."

Subtitle

"TO CONFORM THE CODE WITH THE PROCEDURAL RULES OF THE
JUDICIAL DISCIPLINE AND DISABILITY COMMISSION."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-10-404 is hereby amended to read as
follows:

"16-10-404. Duties - Records.

(a) The commission shall initiate or shall receive information, conduct
investigations and hearings, and make recommendations to the Arkansas Supreme
Court concerning:

(1) Allegations of judicial misconduct;

(2) Allegations of physical or mental disability of judges
requiring leave or involuntary retirement; and

(3) Matters of voluntary retirement or leave for disability.

(b)(1) Investigatory records, files, and reports of the commission are
confidential, and no disclosure of information, written, recorded, or oral,
received or developed by the commission in the course of an investigation
related to alleged misconduct or disability of a judge, shall be made except
as follows:

(A) Upon waiver in writing by the judge at any stage of the
proceedings;

1 (B) Upon inquiry by an appointing authority or by a state
2 or federal agency conducting investigations on behalf of such authority in
3 connection with the selection or appointment of judges;

4 (C) In cases in which the subject matter or the fact of the
5 filing of charges has become public, if deemed appropriate by the commission,
6 it may issue a statement in order to confirm the pendency of the
7 investigation, to clarify the procedural aspects of the proceedings, to
8 explain the right of the judge to a fair hearing, and to state that the judge
9 denies the allegations;

10 (D) Upon inquiry in connection with the assignment or
11 recall of a retired judge to judicial duties, by or on behalf of the assigning
12 authority;

13 (E) Upon the commission taking final action with respect to
14 a complaint about a judge, notice of the final action shall become public
15 information;

16 (F) Where the circumstances necessitating the initiation of
17 an inquiry include notoriety, or where the conduct in question is a matter of
18 public record, information concerning the lack of cause to proceed shall be
19 released by the commission;

20 (G) If during the course of or after an investigation or
21 hearing the commission reasonably believes that there may have been a
22 violation of any rules of professional conduct of attorneys at law, the
23 commission may release such information to any committee, commission, agency
24 or body within or outside of the State empowered to investigate, regulate or
25 adjudicate matters incident to the legal profession; or

26 (H) If during the course of or after an investigation or
27 hearing, the commission reasonable believes that there may have been a
28 violation of criminal law, the commission shall release such information to
29 the appropriate prosecuting attorney.

30 (2) All proceedings held prior to a determination of probable
31 cause and the filing of formal charges shall be confidential. Any hearing
32 scheduled after the filing of formal charges shall be open to the press and to
33 the public, except that, following the completion of the introduction of all
34 evidence, the commission may convene to executive session for the purpose of
35 deliberating its final conclusions and recommendations, provided, that, upon

1 completion of the executive session, the final action of the commission shall
2 be announced in an open and public session.

3 (3) The commission is authorized to request the appropriate
4 prosecuting authorities to seek to obtain immunity from criminal prosecution
5 for a reluctant witness, using the procedure outlined in A.C.A. §16-43-601, et
6 seq."

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8 SECTION 2. It is hereby found that an Arkansas Supreme Court en banc
9 decision, dated May 14, 1990 has left statutes in conflict with the
10 Commission_s Rules of Procedure. In addition, because the commission is an
11 agency of limited jurisdiction, strict confidentiality requirements have
12 prevented the commission from cooperating with enforcement agencies like the
13 Supreme Court Committee on Professional Conduct and prosecuting attorneys.
14 This legislation is necessary to conform statutes to the Commission_s Rules of
15 Procedure and to provide an avenue of cooperation between the above mentioned
16 enforcement agencies.

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18 SECTION 3. All provisions of this act of a general and permanent nature
19 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
20 Revision Commission shall incorporate the same in the Code.

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22 SECTION 4. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

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28 SECTION 5. All laws and parts of laws in conflict with this act are
29 hereby repealed.

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31 APPROVED: 04/12/93

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