

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

425

By: Senate Judiciary Committee

For An Act To Be Entitled

"AN ACT TO ESTABLISH THE ARKANSAS JUDICIAL DISCIPLINE AND
DISABILITY COMMISSION; AND FOR OTHER PURPOSES."

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

SECTION 1. Definitions. The word "judge" in this act means anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, or magistrate, whether full-time or part-time.

SECTION 2. (a) There is hereby established a committee to be known as the Arkansas Judicial Discipline and Disability Commission (hereinafter referred to as "Commission"), consisting of nine (9) members, each of whom shall be residents of Arkansas, and shall be appointed as follows:

(1) three (3) members shall be judges of the Arkansas Court of Appeals, Circuit Court, Chancery Court or Municipal Court appointed by the Arkansas Supreme Court;

(2) three (3) members shall be lawyers admitted to practice in Arkansas who are not judges or former or retired judges, one (1) of whom shall be appointed by the Attorney General, one (1) by the President of the Senate, and one (1) by the Speaker of the House; and

(3) three (3) members who are neither lawyers or judges or former or retired judges, appointed by the Governor.

(b) (1) A Commission member shall serve for a term of six (6) years and shall be eligible for reappointment to a second full term. Initial appointments shall be made so that the terms of one (1) member in each of the three categories shall expire every other year. A member appointed to a term of less than six (6) years or to fill an unexpired term may be reappointed to two (2) full terms.

(2) When initial appointments are made, the appointing authority for each category of Commission membership shall also appoint an alternate member for each regular member appointed. An alternate member shall be appointed for a term of six (6) years and may be reappointed for a second term. An alternate member appointed to fill an unexpired term shall be eligible for an appointment for two (2) full terms.

(c) If a Commission member or an alternate Commission member moves out of the jurisdiction, ceases to be eligible for appointment to represent the category for which he was appointed, or becomes unable to serve for any reason, a vacancy shall occur. An appointment to fill a vacancy for the duration of its unexpired term shall be made by the appropriate appointing authority, effective no later than sixty (60) days from the occurrence of the vacancy. If a vacancy is not filled in accordance with this paragraph, the Chief Justice of the Supreme Court shall, within ten (10) days thereafter, appoint, from the category to be represented, a member who shall serve for the duration of the unexpired term.

(d) Commission members shall serve without pay, but shall be entitled to maximum per diem expenses as authorized by the General Assembly for each day attending meetings of the Commission or in attending to official business as authorized by the Commission, and, in addition thereto, shall be entitled to mileage for official travel in attending Commission meetings or other official business of the Commission, at the rate provided by law or state travel regulations for reimbursement to state employees for official state travel.

(e) The Commission shall employ a Director and such additional professional and clerical staff as may be authorized, from time to time, by appropriation passed by the General Assembly. The Director shall not engage in the practice of law nor serve in a judicial capacity during his or her employment.

(f) 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.

(g) (1) Records, files and reports of the Commission shall be

confidential and no disclosure shall be made except as follows:

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

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

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

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

(E) upon filing of formal charges, in which case only the charges and the records of the formal proceedings thereon shall become public;

(F) where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed shall be released by the Commission.

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

SECTION 3. Leave. Grounds for leave consist of a temporary physical or mental incapacity which impairs the ability of the judge to substantially perform the duties of his or her judicial office and which exists or is likely to exist for a period of one year or less. Leave cannot be granted to exceed one year.

SECTION 4. Suspension with pay. A judge may be suspended by the Supreme Court with pay (a) while an indictment or information charging him or her in any court in the United States with a crime punishable as a felony under the laws of Arkansas or the United States is pending; (b) while a recommendation to the Supreme Court by the commission for his or her removal, or involuntary disability retirement is pending; or (c) when articles of impeachment have been voted by the House of Representatives.

SECTION 5. Suspension without pay. A judge may be suspended from office without pay by the Supreme Court when in any court in the United States he pleads guilty or no contest to, or is found guilty of an offense punishable as a felony under the laws of Arkansas or the United States, or of any other offense that involves moral turpitude. If his conviction becomes final, he may be removed from office. If his conviction is reversed and he is cleared of the charge, by order of the court, whether without further trial or after further trial and a finding of not guilty, his suspension terminates, and he shall be paid his salary for the period of his suspension. But nothing in this section shall prevent the Commission from determining that a judge be disciplined or removed according to Section (6) of this act. A judge may be suspended without pay for up to 30 days as punishment for misconduct that is deemed grounds for removal under section (6) (b) of this act.

SECTION 6. (a) Removal from office. The grounds for removal conferred by this act shall be both alternative and cumulative to the power of impeachment provided by the constitution and removal otherwise provided by law.

(b) Grounds for removal.

(1) A judge may be removed from office on any of the following grounds:

(a) conviction of any offense punishable as a felony under the laws of Arkansas or the United States;

(b) conviction of a criminal act that reflects adversely on the judge's honesty, trustworthiness, or fitness as a judge in other respects;

(c) the commission of conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) the commission of conduct that is prejudicial to the administration of justice;

(e) willful violation of the Code of Judicial Conduct or Professional Responsibility;

(f) willful and persistent failure to perform the duties of office;

(g) habitual intemperance in the use of alcohol or other drugs.

(2) In considering recommending removal, the Commission may consider the frequency of the offense, the motivation of the conduct, the length of time since the conduct in question, and similar factors.

(3) Any judge removed from office pursuant to this act cannot be appointed thereafter to serve as a judge.

SECTION 7. Vacancy. The granting of leave, suspension, with or without pay, removal or involuntary disability retirement pursuant to this act shall create a vacancy in the judicial office.

SECTION 8. Members of the commission, referees, commission counsel and staff shall be absolutely immune from suit for all conduct in the course of their official duties.

SECTION 9. The Arkansas Supreme Court shall adopt rules with regard to all matters of Commission operations and all disciplinary and disability proceedings and promulgate rules of procedure.

SECTION 10. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 11. All laws and parts of laws in conflict with this Act are hereby repealed.