

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

A Bill

SENATE BILL

For An Act To Be Entitled

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

Subtitle

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

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

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

22 "16-10-404. Duties - Records.

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

26 (1) Allegations of judicial misconduct;

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

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

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

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

1 proceedings;

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

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

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

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

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

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

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

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

1 deliberating its final conclusions and recommendations, provided, that, upon
2 completion of the executive session, the final action of the commission shall
3 be announced in an open and public session.

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

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

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

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

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

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