

LEGISLATIVE BILL 754

Approved by the Governor March 28, 2005

Introduced by Chambers, 11; Dw. Pedersen, 39

AN ACT relating to the Commission on Judicial Qualifications; to amend section 24-719, Reissue Revised Statutes of Nebraska, and section 24-721, Revised Statutes Supplement, 2004; to require an annual report; to change provisions relating to judicial reprimands; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 24-719, Reissue Revised Statutes of Nebraska, is amended to read:

24-719. (1) Meetings of the Commission on Judicial Qualifications shall be held at least annually at Lincoln, Nebraska, or at such other place or places within the State of Nebraska and at such time as the commission may determine. A majority of the members of the commission shall constitute a quorum. No + PROVIDED, that no action of the commission shall be valid unless concurred in by a majority of its members. The date of the annual meeting of the commission shall be fixed by resolution of the commission and special meetings of the commission may be called at any time by the chairperson or vice-chairperson of the commission or by the Supreme Court or at the written request of any two members of the commission.

(2) To the extent permitted by the Constitution of Nebraska, the commission shall prepare and make available to the public an annual report outlining the activities of the commission in the previous year. The report shall include, but not be limited to:

- (a) The total number of meetings held by the commission;
- (b) The total number of complaints filed with the commission;
- (c) The total number of complaints dismissed by the commission;
- (d) The total number of public reprimands issued by the commission;
- (e) The total number of formal complaints filed by the commission;

and

- (f) The costs incurred by the commission which shall include:
- (i) Expenses paid to commission members pursuant to section 24-718;
- (ii) Expenses paid to special masters appointed by the commission;

and

(iii) Expenses paid to special investigators hired by the commission.

Sec. 2. Section 24-721, Revised Statutes Supplement, 2004, is amended to read:

24-721. Any citizen of the State of Nebraska shall have the right at all times to complain to the Commission on Judicial Qualifications with reference to the acts, activities, or qualifications of any Justice or judge of the Supreme Court or judge of any of the courts of the State of Nebraska or to request that the commission consider the qualifications of any Justice or judge of the Supreme Court or judge of any of the courts of the State of Nebraska. Upon receipt of any such complaint or request, the commission shall make such investigation as it determines to be necessary. The commission shall have the right to subpoena witnesses; to hold hearings; to require the Justice or judge to submit to physical or mental examination by medical experts; to appoint special masters to conduct hearings; to make independent investigations, either by members of the commission or by special investigators employed by the commission; to hold confidential prehearing proceedings with the person or persons filing the complaint or request, or with his or her or their agents or attorneys; and to hold confidential prehearing proceedings with the judge or Justice involved in the complaint or request. If the commission finds probable cause for the existence of any of the grounds for disciplinary action or retirement specified in section 24-722, it shall ~~privately~~ reprimand the Justice or judge or order a formal open hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or judge. Any reprimand shall be public and shall be announced in a fashion similar to that of a published opinion of the Supreme Court. A judge who receives official notice of a complaint or request pursuant to this section shall not be allowed to retire pursuant to the Judges Retirement Act until the matter is resolved by the commission or the Supreme Court, if the commission recommends action by the court. If a hearing is ordered, the commission shall advise the judge or Justice involved, in writing, of the specific charges which have been made and

supported, substantiated, or revealed by the independent investigation of the commission. The judge or Justice shall be given reasonable time in which to formally answer such charges in writing and the matter shall then be set for formal open hearing, at which time the commission shall cause the testimony and the documentary evidence relating to the charges to be produced and recorded in such manner as the commission shall determine to be advisable, giving the judge or Justice involved and his or her attorney a full opportunity to question and cross-examine the witnesses and evidence so produced. The judge or Justice shall have an opportunity to produce at such hearing, testimony, evidence, and documents relating to the charges involved; thereafter any rebuttal evidence may be produced. In the alternative or in addition, the commission may request the Supreme Court to appoint one or more special masters who shall be judges of courts of record to hold a formal open hearing to take evidence in any such matter, and to report to the commission. Whenever any person shall refuse to testify or to produce books, papers, or other evidence when required to do so in any hearing held before the Commission on Judicial Qualifications or before a special master or masters appointed under the provisions of this section for the reason that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a forfeiture or penalty, he or she may nevertheless be compelled to testify or produce such evidence by order of the Commission on Judicial Qualifications or special master or masters on motion of counsel to the commission. No person who testifies or produces evidence in obedience to the command of the commission or special master or masters in such case shall be liable to any forfeiture or penalty for or on account of any transaction, matter, or thing concerning or arising from that as to which he or she may so testify or produce evidence, nor shall such testimony or evidence be used directly or indirectly in any proceedings against him or her, except that no person shall be exempt from prosecution and punishment for perjury or contempt committed in so testifying. The requirement to testify or produce evidence shall not apply when such person proves the real and substantial danger of a prosecution against him or her in another jurisdiction based on the admissions to be made by him or her in this state. The commission or special master or masters shall have power to punish for contempt for any action specified in section 25-2121. If, after formal open hearing, or after considering the record and report of the masters, the commission finds that the charges are established by clear and convincing evidence, it shall recommend to the Supreme Court that the Justice or judge of the Supreme Court or other judge involved shall be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, removed, or retired as the case may be. All hearings before the commission and all proceedings before masters and before the Supreme Court shall be conducted in accordance with rules promulgated or to be promulgated by the Supreme Court.

Sec. 3. Original section 24-719, Reissue Revised Statutes of Nebraska, and section 24-721, Revised Statutes Supplement, 2004, are repealed.