

ENGROSSED HOUSE
BILL NO. 2760

By: Perry, Askins, Braddock,
Morgan (Fred), Terrill and
Sullivan of the House

and

Laster of the Senate

(Council on Judicial Complaints - amending 20 O.S.,
Sections 1651, 1653, 1654, 1655, 1658 and 1659 -
membership - Administrative Director -
effective date)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 20 O.S. 2001, Section 1651, is
amended to read as follows:

Section 1651. It is hereby declared to be the public policy of
this state:

1. To afford a means for efficiently and impartially
investigating complaints by any person concerning the conduct of
persons occupying positions subject to the jurisdiction of the Court
on the Judiciary;

2. To provide an agency which can determine whether such
complaints should:

a. be made the subject of action before the Court on the
Judiciary for the purpose of removal, ~~reprimand, or~~
~~admonition, or~~

b. be made the subject of action before the Court on the
Judiciary for the purpose of compulsory retirement,

c. be made the subject of action before a Trial Panel of
the Court on the Judiciary for the purpose of imposing

discipline less than removal or compulsory retirement,

or

d. be dismissed;

3. To provide means for procuring necessary information to enable the agency to perform its functions, including the power to issue and enforce subpoenas to testify or to produce tangible evidentiary materials; ~~and~~

4. To provide a means of prosecuting proceedings in which discipline less than removal or compulsory retirement is sought; and

5. To better the administration of justice in this state through the means enumerated in Sections 1651 through 1662 of this title.

SECTION 2. AMENDATORY 20 O.S. 2001, Section 1653, is amended to read as follows:

Section 1653. A. ~~The~~ 1. Until January 1, 2007, the Council on Judicial Complaints shall consist of three (3) members, only two of whom shall be members of the ~~Bar of the State of Oklahoma~~ Bar Association and only two of whom shall constitute a quorum. One member shall be appointed by the President Pro Tempore of the Senate; one member shall be appointed by the Speaker of the House of Representatives; and one member shall be appointed by the President of the Oklahoma Bar Association.

2. a. Beginning January 1, 2007, the Council on Judicial Complaints shall consist of seven (7) members, only three of whom shall be members of the Oklahoma Bar Association. One member shall be appointed by the President Pro Tempore of the Senate, without the advice and consent of the Senate; one member shall be appointed by the Speaker of the House of Representatives; two members shall be appointed by the Governor; one member, who shall be a retired district court or appellate judge, shall be appointed by the

Chief Justice of the Supreme Court; and two members, who shall be members of the Oklahoma Bar Association, shall be appointed by the President of the Oklahoma Bar Association.

b. For the composition of the Council on January 1, 2007:

(1) individuals who are members of the Council on December 31, 2006, shall retain their offices for the balance of their terms and shall be eligible for reappointment, subject to the limitation provided in subsection C of Section 1654 of this title,

(2) any such members who are attorneys shall be deemed to be the appointees of the Oklahoma Bar Association, regardless of the initial appointing authority, and

(3) the initial appointing authority other than the Oklahoma Bar Association of an attorney-member on the Council on December 31, 2006, shall make an extra initial appointment on the Council. The person appointed shall not be a member of the Oklahoma Bar Association.

B. Four members of the Council shall constitute a quorum.

C. Members of the Council, during their terms of office, shall not be eligible for election or appointment to the Judicial Nominating Commission.

SECTION 3. AMENDATORY 20 O.S. 2001, Section 1654, is amended to read as follows:

Section 1654. A. Of the members first appointed to the Council on Judicial Complaints, one shall serve for three (3) years and until a successor shall be appointed and qualified; one shall serve for four (4) years and until a successor shall be appointed and qualified; and one shall serve for five (5) years and until a

successor shall be appointed and qualified. The respective terms of the first members shall be determined by lot at the first meeting of the Council, and the results thereof shall be certified to the Secretary of State and to the appointing authority for each individual member. Thereafter, each appointee shall serve for a term of five (5) years and until a successor is selected and qualified.

B. Of the four additional members appointed to the Council in 2007, the members appointed by the Governor shall serve for three (3) years and until successors shall be appointed and qualified and the other members shall serve for four (4) years and until successors shall be appointed and qualified. Thereafter, each appointee shall be appointed as provided in subparagraph a of paragraph 2 of subsection A of Section 1653 of this title and shall serve for a term of five (5) years and until a successor is appointed and qualified.

C. No person shall be eligible to serve more than two terms on the Council.

SECTION 4. AMENDATORY 20 O.S. 2001, Section 1655, is amended to read as follows:

Section 1655. A. There is created the position of Administrative Director to the Council on Judicial Complaints who shall be a state employee hired by the Council. The Administrative Director shall receive and file all complaints received concerning the conduct of persons occupying positions in the judicial department of the government and subject to the jurisdiction of the Court on the Judiciary. The Administrative Director shall notify the members of the Council of each complaint filed with the Director. The Administrative Director shall attend all meetings and hearings of the Council, keep its records, prepare reports required by statute, approve claims for payment as directed by the chair, and perform other tasks as the Council shall direct.

B. The Administrative Director:

1. Shall be an attorney licensed to practice law in this state;

2. Shall not engage in the private practice of law while employed by the Council; and

3. Shall serve as General Counsel for the Council.

SECTION 5. AMENDATORY 20 O.S. 2001, Section 1658, is amended to read as follows:

Section 1658. A. The Council on Judicial Complaints shall promptly investigate all complaints received by it, and shall determine the proper disposition thereof, as provided in Sections 1651 through 1661 of this title.

B. The Council shall have power to hold hearings, administer oaths or affirmations, receive testimony and other evidence, ~~and~~ issue and serve or cause to be served subpoenas requiring testimony or the production of books, records, papers or other tangible evidence, and issue letters of admonition pursuant to subsection C of this section. If the Court on the Judiciary is given the authority to impose discipline other than removal from office or compulsory retirement, the Council shall have the authority to prosecute cases before the Court seeking discipline other than removal from office or compulsory retirement.

C. If, during the investigation of a complaint, the Council discovers evidence of misconduct, but the misconduct is insufficient for the filing of a petition with the Court, the Council shall file a written report of the misconduct with the Chief Justice of the Supreme Court. Within ten (10) days after receipt of the report, the Chief Justice shall issue a letter of admonition to the judge who is the subject of the complaint. The letter of admonition shall warn the subject of the complaint of potential problems that could lead to disciplinary action by the Court on the Judiciary. The letter of admonition shall not be considered to be a disciplinary action. The letter of admonition shall be a confidential document,

not subject to public inspection, but may be produced as evidence in any proceeding before the Court on the Judiciary. If the Chief Justice does not issue the letter within the time prescribed by this subsection, the Council may issue the letter of admonition.

D. 1. Subject to funding limitations provided by law, the Council, as needed, may retain, by contract, a court reporter, as needed, may retain an investigator and, as needed, may retain an attorney by contract with either the Office of the Attorney General or other counsel.

2. No person acting as counsel to the Council on Judicial Complaints shall be eligible for election or appointment to the Judicial Nominating Commission during the term of his or her employment or contract for services.

~~D.~~ E. The Council is hereby authorized to require in aid of its investigatory functions the services of the Oklahoma State Bureau of Investigation as provided for in Section 150.34 of Title 74 of the Oklahoma Statutes or of any governmentally supported investigatory agency or, upon authorization of the Board of Governors of the Oklahoma Bar Association, of the services of the Oklahoma Bar Association.

~~E.~~ F. In the event of contemptuous refusal to obey its lawful orders, the Council may take steps necessary to maintain order in its session; as to contempts not affecting the maintenance of order, it shall certify the matter to the Chief Justice of the Supreme Court, which shall assign the case for trial and appropriate disposition to a judge of a district court. In a contempt proceeding in district court, the counsel for the Council on Judicial Complaints shall act as prosecutor against the alleged contemnor.

~~F.~~ G. 1. All proceedings under this section shall be held in secrecy to the same extent as proceedings before a grand jury.

2. A complainant or a witness appearing before the Council who reveals or causes to be revealed to the public any information about a proposed or pending judicial complaint shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00). The Council on Judicial Complaints shall promulgate rules pursuant to the Administrative Procedures Act governing proceedings under this subsection.

3. In addition to the fine provided for in paragraph 2 of this subsection, any judicial officer who reveals or causes to be revealed any information about a proposed or pending judicial complaint shall be subject to public reprimand by the Court on the Judiciary.

SECTION 6. AMENDATORY 20 O.S. 2001, Section 1659, is amended to read as follows:

Section 1659. A. In the event the Council on Judicial Complaints finds that the complaint should be made the subject of proceedings seeking removal or compulsory retirement before the Court on the Judiciary, it shall forward all papers concerning the same, together with its findings, to either the Supreme Court or the Chief Justice thereof, the Governor, the Attorney General, the Executive ~~Secretary~~ Director of the Oklahoma Bar Association, or the House of Representatives, who shall promptly file a petition invoking the jurisdiction of the trial division of the Court on the Judiciary in accordance with subsection (a) of Section 4 of Article 7-A of the Constitution of Oklahoma; provided, however, filing by the Executive ~~Secretary~~ Director of the Oklahoma Bar Association shall be at the direction of the majority of the members of the ~~Executive Council~~ Board of Governors or by resolution of the House of Delegates of the Oklahoma Bar Association. Thereafter, the matter shall proceed in accordance with the applicable constitutional provisions, statutes, and rules of the Court on the Judiciary.

B. In the event the Council on Judicial Complaints finds that a complaint should be made the subject of a proceeding seeking discipline less than removal or compulsory retirement before the Court on the Judiciary, it shall file a petition with the Clerk of the Court on the Judiciary, who shall forward all papers concerning the same, together with the Council's finding, to the presiding judge of the Trial Division of the Court on the Judiciary. The presiding judge shall assign the matter to a three-member Trial Panel of the Trial Division to preside over the matter. Each Trial Panel so assigned shall consist of two members who are district judges and one member who is not a member of the Oklahoma Bar Association. In proceedings before a Trial Panel, the General Counsel for the Council on Judiciary Complaints shall act as prosecutor.

C. All records of proceedings before a Trial Panel of the Trial Division of the Court on the Judiciary shall be confidential, unless the Panel imposes discipline greater than a private reprimand.

SECTION 7. This act shall become effective January 1, 2007.

Passed the House of Representatives the 14th day of March, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2006.

Presiding Officer of the Senate