

Amendment No. 2 to SB1088

McNally
Signature of Sponsor

AMEND Senate Bill No. 1088

House Bill No. 1198*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 17-5-201, is amended by deleting the section in its entirety and substituting instead the following:

(a) Notwithstanding any other provision of law to the contrary, the Court of the Judiciary is reconstituted effective October 1, 2011 and the terms of the present members of the Court of the Judiciary shall terminate on such date. On that date, there is created a Court of the Judiciary to consist of twelve (12) members to be selected in the following manner:

(1) One (1) member who is a trial court judge to be appointed by the speaker of the senate;

(2) One (1) member who is a general sessions court judge licensed to practice law in this state, to be appointed by the speaker of the house of representatives;

(3) One (1) member who is a municipal court judge licensed to practice law in this state to be appointed by the speaker of the senate;

(4) One (1) member who is a juvenile court judge licensed to practice law in this state to be appointed by the speaker of the house of representatives;

(5) One (1) member who is a retired trial court judge to be appointed by the speaker of the senate;

(6) One (1) member who is a retired or active law enforcement officer to be appointed by the speaker of the house of representatives;

(7) Three (3) members of the public who are not judges or attorneys, with one (1) residing in each grand division of the state, to be appointed by the speaker of the senate;

(8) Three (3) members of the public who are not judges or attorneys, with one (1) residing in each grand division of the state, to be appointed by the speaker of the house of representatives;

(b) The board shall select its own presiding judge.

(c) Each member of the court of the judiciary shall serve for a term of two (2) years and shall be eligible for reappointment to one (1) additional term. Vacancies on the court for an unexpired term shall be made for the remainder of the term by the appointing power of the original appointment.

(d)

(1) The presiding judge shall divide the board into a hearing panel of five (5) members and two (2) investigative panels of three (3) members. Membership on the panels may rotate in a manner determined by the presiding judge; provided, that no members shall sit on both the hearing and investigative panels for the same proceeding.

(2) A hearing panel has the duty and authority to rule on prehearing motions, conduct hearings on formal charges and make findings, conclusions, and impose sanctions or dismiss the case.

(3) An investigative panel has the duty and authority to:

(A) Review the recommendations of disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint; and

(B) Review the recommendations of disciplinary counsel after full investigation and approve, disapprove or modify the recommendations as provided in § 17-5-304.

(e) The speaker of the senate and speaker of the house of representatives, in making their appointments, shall do so with a conscious intention of selecting a board that reflects a diverse mixture with respect to race, including the dominant ethnic minority population, and gender.

SECTION 2. Tennessee Code Annotated, Section 17-5-304, is amended by deleting subsections (a) and (b), redesignating the present subsections accordingly, and by substituting instead the following:

(a) Disciplinary counsel shall evaluate all information coming to the counsel's attention by complaint, upon the request of any member of the court or from any other credible source that alleges judicial misconduct or incapacity.

(b) The complaint shall allege specific facts directly relating to the alleged misconduct or incapacity of the judge in question. All complaints shall be reviewed by disciplinary counsel and if, in the judgment of disciplinary counsel, the complaint establishes probable cause that the conduct complained of occurred and violates § 17-5-302, counsel shall, subject to review by the investigative panel pursuant to subdivision (c)(3), conduct a preliminary investigation. If the disciplinary counsel believes the complaint fails to establish probable cause that either the conduct occurred or the conduct constituted a violation of § 17-5-302, counsel shall, subject to review by the investigative panel pursuant to subdivision (c)(3), dismiss the complaint, or if appropriate, refer the matter to another agency.

(c)

(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether the specific facts alleged are true and, if so, whether the facts establish probable cause that a violation of § 17-5-302 has occurred; provided, that no subpoena shall issue to obtain testimony or evidence until the investigative panel authorizes a full investigation pursuant to subdivision (3) of this subsection (c).

(2) If disciplinary counsel believes there is evidence supporting the allegations against a judge, the counsel shall recommend to the investigative panel assigned to the case that the panel authorize a full investigation. Disciplinary counsel may also recommend a full investigation when it believes that there is evidence that would establish probable cause that a violation of § 17-5-302 has occurred and such evidence could be obtained by subpoena or further investigation. In all other cases, the disciplinary counsel must recommend that the matter be dismissed.

(3) The investigative panel shall review the disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation. Disciplinary counsel shall not have the authority to dismiss a complaint without the review of and approval by the investigative panel.

SECTION 3. Tennessee Code Annotated, Title 17, Chapter 5, Part 2, is amended by adding the following new section:

Section 17-5-207.

(a) On a quarterly basis, the court shall file a report with the chairman of the senate judiciary committee and house judiciary committee detailing the following information:

(1) The number of complaints against judges filed during the previous quarter;

(2) The disposition of each complaint; and

(3) The status of any preliminary investigation, investigative panel investigation or trial authorized or ongoing by the court.

(b) The quarterly report shall not reveal the name of any judge against whom a complaint has been filed but shall indicate if more than one (1) complaint has been filed against a particular judge. However, if

more than one (1) complaint has been filed against the same judge, the chairman of either judiciary committee may contact the presiding judge of the court for the purpose of inspecting all complaints filed against such judge to determine if further action by the general assembly is warranted. However, if complaints are requested for inspection by either or both chairs of the judiciary committees, the name of the judge and the contents of the complaint shall maintain its confidential status unless such information becomes public during the course of a proceeding or investigation to impeach the judge under Article V of the Tennessee constitution or to remove the judge under Article VI, Section 6 of the Tennessee constitution.

SECTION 4. Tennessee Code Annotated, Section 17-5-314, is amended by deleting subsection (a) and substituting instead the following:

(a) The expenses incurred in the administration of this chapter involving additional pay to retired judges, together with expenses incurred in paying witnesses per diem and travel expenses, where applicable as provided in §§ 24-4-101 and 24-4-102, expenses in the taking of depositions, and expenses incurred in the reporting of any proceeding under this chapter shall be paid through the secretary of state.

SECTION 5. For purposes of appointing the members of the reconstituted Court of the Judiciary created by this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on October 1, 2011, the public welfare requiring it.