

SENATE BILL 2671

By Faulk

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29 and Title 17, Chapter 5, relative to the court of the judiciary.

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

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 law to the contrary, the court of the judiciary is dissolved effective July 1, 2012, and the terms of the present members of the court of the judiciary shall terminate on such date. On that date, there is created the board of judicial conduct to consist of sixteen (16) members to be selected in the following manner:

(1) Two (2) judges on the court of appeals or the court of criminal appeals, to be appointed by the Tennessee judicial conference;

(2) One (1) trial judge from each grand division, to be appointed by the Tennessee judicial conference;

(3) One (1) general sessions court judge from each grand division, to be appointed by the Tennessee general sessions judges conference;

(4) One (1) municipal court judge, to be appointed by the Tennessee municipal judges conference;

(5) One (1) juvenile court judge, to be appointed by the Tennessee council of juvenile and family court judges;

(6) Two (2) members of the public who are not judges, one (1) of whom shall be a practicing attorney, to be appointed by the speaker of the senate;

(7) Two (2) members of the public who are not judges, one (1) of whom shall be a practicing attorney, to be appointed by the speaker of the house of representatives; and

(8) Two (2) members of the public who are not judges, one (1) of whom shall be a practicing attorney, to be appointed by the governor.

(b) The board shall select its own chairperson. The board also shall select a vice chair and shall select one (1) member to serve as a direct liaison to the members of the general assembly.

(c) Each member of the board shall serve for a term of three (3) 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 chair shall divide the board into a hearing panel of twelve (12) members and an investigative panel of three (3) members.

Membership on the panels may rotate in a manner determined by the chair; 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 a full investigation and approve, disapprove or modify the recommendations as provided in § 17-5-304.

(e) The appointing authorities, 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), substituting instead the following and redesignating existing subsections accordingly:

(a) Disciplinary counsel shall evaluate all information coming to the counsel's attention by complaint, upon the request of any member of the board 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 the 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), recommend dismissal of 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 (c)(3).

(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 board shall file a report with the chairs of the judiciary committees of the senate and house of representatives detailing at least the following information:

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

(2) The disposition of each complaint.

(b) The board shall adopt by rule a formal records retention policy and shall review such policy on an annual basis to determine if changes should be made.

SECTION 4. The Tennessee code commission is requested to replace the references in Title 17, Chapter 5 to the “court of the judiciary” with “board of judicial conduct,” to “court” with “board” and to make such other revisions reflecting changing the name of the “court of the judiciary” to the “board of judicial conduct” as are necessary, as sections are amended and volumes are replaced.

SECTION 5. In order to carry out its functions, duties, and responsibilities maintained under the provisions of this act, the court of the judiciary shall retain and have the authority to exercise any and all of its powers and duties existing under Title 17 prior to enactment of this act, including, but not limited to, the power to subpoena, the power to take evidence, and the power to examine. Upon the termination of the court of the judiciary, the board of judicial conduct is expressly granted the same powers and duties as set forth above for the court of the judiciary in order to carry out its responsibilities established by the provisions of this act. The board of judicial conduct also is expressly authorized to continue any preliminary investigations, full investigations, and/or trials scheduled or in progress by the court of the judiciary at the time of termination of the court of the judiciary. This authorization includes the right to use any evidence obtained or taken by the court of judiciary without the need to obtain again or retake any such evidence, including, but not limited to, prior issued subpoenas.

SECTION 6. All rules of the court of the judiciary in effect on the effective date of this section shall remain in full force and effect as rules of the board of judicial conduct until modified or repealed by the board of judicial conduct.

SECTION 7. Tennessee Code Annotated, Section 4-29-236, is amended by adding a new subdivision as follows:

() Tennessee board of judicial conduct, created by § 17-5-201;

SECTION 8. For purposes of appointing the members of the board of judicial conduct 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 July 1, 2012, the public welfare requiring it.