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

SECTION 1. Tennessee Code Annotated, Section 17-5-101(1)(C), is amended by deleting the word "it" and substituting instead the words " the judiciary".

SECTION 2. Tennessee Code Annotated, Section 17-5-102, is amended by adding the words and punctuation ", juvenile court, municipal" between the word "probate" and the word "and".

SECTION 3. Tennessee Code Annotated, Section 17-5-102(a), is amended by deleting the word and number "fourteen (14)" and substituting instead the word and number "fifteen (15)" in the second sentence.

SECTION 4. Tennessee Code Annotated, Section 17-5-201(a), is amended by deleting the following language:

> "Two (2) public members who are not judges, retired judges, nor licensed attorneys of the state of Tennessee; one (1) to be appointed by the speaker of the senate and one (1) to be appointed by the speaker of the house of representatives"

and substituting instead the following language:

> Three (3) public members who are not judges, retired judges, nor licensed attorneys of the state of Tennessee; one (1) to be appointed by the speaker of the senate; one (1) to be appointed by the speaker of the house of representatives; and one (1) to be appointed by the governor;

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SECTION 5. Tennessee Code Annotated, Section 17-5-201, is amended by adding the following appropriately designated new subsections at the end of the section:

"( ) The presiding judge shall divide the court 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 presiding judge provided that no members shall sit on both the hearing and investigative panel for the same proceeding.

( ) An investigative panel shall have the duty and authority to:

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

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

( ) A hearing panel shall have the duty and authority to rule on pre-hearing motions, conduct hearings on formal charges and make findings, conclusions, and impose sanctions or dismiss the case."

SECTION 6. Tennessee Code Annotated, Section 17-5-204, is amended by deleting the language and punctuation "(and Court of Appeals and Court of Criminal Appeals) at Nashville."

SECTION 7. Tennessee Code Annotated, Section 17-5-206, is amended by deleting the first sentence in its entirety and substituting instead the following:

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"In the event any member elects to recuse or abstain in any matter, the same may be heard by the remaining members of the court, or at the option of the presiding judge, a temporary replacement may be designated by the presiding judge.

SECTION 8. Tennessee Code Annotated, Section 17-5-301, is amended by deleting this section in its entirety and substituting instead the following:

(a) The Court of the Judiciary is hereby given broad powers to investigate, hear and determine charges sufficient to warrant discipline or removal, and to hire disciplinary counsel and provide for salary of disciplinary counsel and to carry out its duties in all other matters as set forth in this chapter.

(b) It is specifically authorized to administer oaths and affirmations; to issue process to compel the attendance of witnesses and the production of evidence; to conduct hearings; and to use, exercise and enjoy any of the powers normally exercised by courts of record in this state. The Tennessee Rules of Civil Procedure are applicable, and the Tennessee Rules of Evidence will govern the presentation of proof.

(c) No action of the court shall be valid unless concurred in by a majority of the members voting upon such action.

(d) The court shall appoint an attorney as disciplinary counsel. Disciplinary counsel shall not be removed from office except by majority vote of the court.

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Nothing in this section shall be construed to preclude the Board of Professional Responsibility from acting as disciplinary counsel or providing all necessary administrative support.

(e) Disciplinary counsel shall have the authority and duty to:

(1) receive and screen complaints, refer complaints to other agencies when appropriate, conduct preliminary investigations, recommend to the investigative panel of the Court and upon authorization conduct full investigations, notify complainants about the status and disposition of their complaints, make recommendations to the investigative panel on the disposition of complaints after full investigation, file formal charges subject to approval of the investigative panel when directed to do so by the investigative panel, and prosecute formal charges;

(2) maintain permanent records of the operations of disciplinary counsel's office, including receipt of complaints, screening, investigation, and filing of formal charges in judicial discipline and incapacity matters;

(3) draft decisions, orders, reports, and other documents on behalf of the hearing and investigative panels if directed by the Court;

(4) compile statistics to aid in the administration of the system, including but not limited to a log of all complaints received, investigative files, and

statistical summaries of docket processing and case dispositions, consistent with § 17-5-305;

(5) prepare disciplinary counsel's budget for submission to the court and administer the funds, as appropriate;

(6) employ and supervise other members of disciplinary counsel's staff;

(7) only with concurrence of the applicable investigative panel, seek investigative assistance from the Tennessee Bureau of Investigation, or from any district attorney general and, in appropriate cases, employ private investigators or experts, as necessary to investigate and process matters before the court; and

(8) perform other duties at the direction of the presiding judge or a majority of the court.

(f) The court shall have the power to impose the following sanctions:

(1) suspension without impairment of compensation for such period as the court determines;

(2) imposition of limitations and conditions on the performance of judicial duties, including the issuance of a cease and desist order;

(3) private admonition by the investigative panel of the court with the consent of the judge, provided that a private admonition may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of the sanction to be imposed;

(4) enter into a deferred discipline agreement; and

(5) enter judgment recommending removal of the judge from office.

(g) For purposes of this chapter, deferred discipline agreement means a response to misconduct that is minor and can be addressed through treatment or a rehabilitation program under which the judge agrees with the recommendation of the investigative panel of the court to undergo treatment, participate in educational programs or take any other corrective action;

(h) No sanction imposed by the court shall violate the prohibition of Article VI, Section 7 of the Tennessee Constitution.

SECTION 9. Tennessee Code Annotated, Section 17-5-303(a), is amended by adding the words "recommendation of" between the word "including" and the word "removal".

SECTION 10. Tennessee Code Annotated, Section 17-5-303, is amended by adding the following appropriately designated new subsection at the end of this section:

( ) In the event the court recommends removal from office under this section, the aggrieved judge may appeal to the Supreme Court as provided in § 17-5-310.

SECTION 11. Tennessee Code Annotated, Section 17-5-304, is amended by deleting this section in its entirety and substituting instead the following:

(a) Disciplinary counsel shall evaluate all information coming to disciplinary counsel's attention by complaint or from other sources that allege judicial misconduct or incapacity. If the information would not constitute misconduct or incapacity if it were

true, disciplinary counsel shall dismiss the complaint, subject to review by the investigative panel pursuant to subsection (b)(3) or, if appropriate, refer the matter to another agency. If the information raises allegations that would constitute judicial misconduct or incapacity if true, disciplinary counsel shall conduct a preliminary investigation.

(b)(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether grounds exist to believe the allegations of complaints, provided that no subpoena shall issue to obtain testimony or evidence until the investigative panel of the court authorizes a full investigation pursuant to subsection (3).

(2) When disciplinary counsel believes there is evidence supporting the allegations against a judge, he or she shall recommend to the investigative panel of the court assigned to the case that the panel authorize a full investigation. Disciplinary counsel may recommend a full investigation when there are grounds to believe that evidence supporting the allegations could be obtained by subpoena or further investigation. In all other cases, disciplinary counsel shall recommend that the matter be dismissed.

(3) The investigative panel shall review disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation.

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(c)(1) Within thirty (30) days after the investigative panel authorizes a full investigation, disciplinary counsel shall give the following notice to the judge by certified mail:

(A) a specific statement of the allegations being investigated and the canons or rules allegedly violated, with the provision that the investigation can be expanded if appropriate;

(B) the judge's duty to respond;

(C) the judge's opportunity to meet with disciplinary counsel; and

(D) the name of the complainant unless the investigative panel determines that there is good cause to withhold that information.

(2) The investigative panel may defer the giving of notice. However, notice must be given pursuant to this section before making a determination other than dismissal of the complaint.

(3) Disciplinary counsel may request that the judge file a written response within [30] days after service of the notice.

(d)(1) Upon the conclusion of a full investigation, disciplinary counsel may recommend to the investigative panel:

(A) dismissal;

(B) private admonition or deferred discipline agreement;

(C) the filing of formal charges;

(D) referral to an appropriate agency; or

(E) a stay.

(2) The investigative panel may adopt, reject or modify the recommendations of disciplinary counsel. If the investigative panel finds a violation for which the imposition of discipline is not warranted, it may dismiss the complaint. If the investigative panel finds that there is reasonable cause to believe the judge committed a judicial offense:

(A) it may direct disciplinary counsel to file formal charges;

(B) it may propose a private admonition or deferred discipline agreement to the judge and if the judge consents, it shall admonish the judge or implement the deferred disciplinary agreement; or

(C) if the judge does not consent to the admonishment or the deferred discipline, the investigative panel may direct disciplinary counsel either to file formal charges or dismiss the complaint.

(e) In the event the investigative panel finds that there is reasonable cause to believe that the judge committed a judicial offense, and the investigative panel directs disciplinary counsel to file a formal charge, then from the filing of the formal charge forward, all records, actions and proceedings of the court shall be subject to the provisions of § 10-7-503 and Title 8, Chapter 44, except that the court may deliberate in private.

(f) Upon the filing of an indictment, presentment or information charging a judge with a felony under the law of any state or under federal law, the court may immediately place the judge on interim suspension.

SECTION 12. Tennessee Code Annotated, Section 17-5-306, is amended by deleting this section in its entirety and substituting instead the following:

Members of the court, disciplinary counsel and their staff shall be absolutely immune from civil suit for all conduct in the course of their official duties.

SECTION 13. Tennessee Code Annotated, Section 17-5-307 is amended by deleting this section in its entirety and substituting instead the following:

(a) When, in the preliminary judgment of the investigative panel, there is probable cause to believe the judge under investigation is guilty of one or more of the offenses prescribed in § 17-5-302, or is suffering from a disability as set forth in § 17-5-303, it shall be the duty of the disciplinary counsel to give the judge under investigation written notice of the details of the formal charges.

(b) The formal charges shall give fair and adequate notice of the nature of the alleged misconduct or incapacity. Disciplinary counsel shall file the formal charges with the court. Disciplinary counsel shall cause a copy of the formal charges to be serviced upon the judge or judge's counsel by certified mail and shall file proof of service with the court.

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(c) The judge shall have thirty (30) days from and after the receipt of written notice of the formal charge, within which to file an answer with the court and serve a copy on disciplinary counsel.

(d) The raising of a mental or physical condition as a defense constitutes a waiver of any medical privilege.

(e) Failure to answer the formal charges shall constitute an admission of the factual allegations.

(f) If the judge should fail to appear when specifically so ordered by the hearing panel or the court, the judge shall be deemed to have admitted the factual allegations which were to be the subject of such appearance and to have conceded the merits of any motion or recommendation to be considered at such appearance. Absent good cause, the hearing panel or court shall not continue or delay proceedings because of the judge's failure to appear.

(g)(1) At any time after the filing of formal charges and before final disposition, the judge may agree with disciplinary counsel that the judge shall admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the hearing panel assigned to the case, which shall either:

(i) reject the agreement; or

(ii) approve the agreement and enter the order disciplining the judge.

(2) If the stated sanction is rejected by the hearing panel, the agreement shall be withdrawn and cannot be used against the judge in any proceedings.

(3) A judge who consents to a stated sanction shall sign an affidavit stating that:

(i) the judge consents to the sanction;

(ii) the consent is freely and voluntarily rendered; and

(iii) there is presently pending a proceeding involving allegations of misconduct (which shall be specifically set forth in the affidavit); and

(iv) the facts set forth in the affidavit are true.

(4) Upon approval by the hearing panel, the affidavit shall be filed with the court. The affidavit shall remain confidential until it is filed with the court. The final order of discipline shall be based upon the formal charges and the conditional admission.

SECTION 14. Tennessee Code Annotated, Section 17-5-308, is amended by adding the following appropriately numbered new subsections at the end of this section:

( ) The hearing shall be conducted by the hearing panel, and no member of the investigative panel for such particular cause shall participate in the hearing or the deliberations of such cause.

( ) A majority of the hearing panel shall constitute a quorum, and a quorum of the hearing panel shall be required in order to hold a hearing. The hearing panel shall decide a matter only upon the concurrence of a majority of all members of the panel hearing the matter.

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( ) Charges of misconduct shall be established by clear and convincing evidence.

SECTION 15. Tennessee Code Annotated, Section 17-5-309, is amended by deleting this section in its entirety and substituting instead the following:

(a) At the conclusion of the hearing, the court may dismiss the charges or impose any sanction authorized in § 17-5-301.

(b) Irrespective of the sanction imposed, the court shall issue a formal finding of fact and opinion.

(c) If the court recommends the removal of a judge from office and by reason of resignation, death, retirement, or otherwise the court determines that its recommendation is moot, its formal opinion shall so state. For purposes of this subsection, the court's removal recommendation shall be considered moot only if it determines that there is no further punitive action the general assembly could take against such judge.

SECTION 16. Tennessee Code Annotated, Section 17-5-311, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) In the event the supreme court affirms the action of the court of the judiciary as provided in § 17-5-309, the judgment of the supreme court shall be final. In the event the supreme court affirms the action of the court of the judiciary in recommending removal of the judge in accordance with § 17-5-303 or § 17-5-309(a) and § 17-5-301 (f)(5), the question of removal shall be transmitted to the general assembly for final

determination. However, if the supreme court affirms the court of the judiciary's action recommending the removal of a judge and its determination that such recommendation is moot as provided in § 17-5-309(c), the matter shall not be transmitted to the general assembly for final determination but shall become final upon the supreme court's action.

SECTION 17. Tennessee Code Annotated, Section 17-5-312, is amended by deleting this section in its entirety.

SECTION 18. This act shall take effect September 1, 1995, the public welfare requiring it.