
A BILL FOR AN ACT

PROPOSING AMENDMENTS TO ARTICLE VI OF THE CONSTITUTION OF THE
STATE OF HAWAII.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Currently, section 5 of article VI of the
2 Constitution of the State of Hawaii provides that the power to
3 reprimand, discipline, suspend, retire or remove justices or
4 judges from office, for misconduct or disability, rests with the
5 supreme court and a commission established by the supreme court.

6 The legislature finds that the power to discipline or
7 remove justices and judges should be exercised by an independent
8 commission.

9 The legislature finds that the process of regulating the
10 conduct of and disciplining judges, and public confidence in
11 that process, will be significantly improved through the
12 establishment of a wholly independent judicial conduct
13 commission.

14 SECTION 2. Article VI of the Constitution of the State of
15 Hawaii is amended by adding a new section to be appropriately
16 designated and to read as follows:

17 "JUDICIAL CONDUCT COMMISSION

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1 Section . There shall be a judicial conduct commission
2 that shall consist of nine members. The governor shall appoint
3 two members to the commission. None may be a judge or justice,
4 and no more than one of the two members shall be a licensed
5 attorney. The president of the senate shall appoint two members
6 to the commission. None may be a judge or justice, and no more
7 than one of the two members shall be a licensed attorney. The
8 speaker of the house shall appoint two members to the
9 commission. None may be a judge or justice, and no more than
10 one of the two members shall be a licensed attorney. Members in
11 good standing of the bar of the State shall elect two of their
12 number to the commission in an election conducted by the bar,
13 but none of the two may be a judge or a justice. All full-time
14 judges of the State of Hawaii shall elect one of their number to
15 the commission in an election conducted by the chief justice.
16 At all times, at least one member of the commission shall be a
17 resident of a county other than the City and County of Honolulu.

18 The members of the commission shall be selected and shall
19 operate in a wholly nonpartisan manner. One of the governor's
20 initial appointees, one of the president of the senate's initial
21 appointees, and one of the speaker of the house's initial
22 appointees shall serve for a term of six years, and one of the

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1 initial appointees of each shall serve for a term of two years.

2 Each of the persons initially elected to the commission shall
3 serve for a term of four years. After the initial formation of
4 the commission, elections and appointments to the commission
5 shall be for staggered terms of six years each. Notwithstanding
6 the foregoing, no member of the commission shall serve for more
7 than six years on the commission.

8 Each member of the commission shall be not less than
9 eighteen years of age, and a resident of the State and a citizen
10 of the United States, and except as set forth in this section,
11 there shall be no other restrictions on who may serve on the
12 commission, and serving on the commission shall not act to
13 disqualify any commissioner from any other service or office.

14 No member shall run for or hold any other elected office
15 under the United States, the State or its political
16 subdivisions. No member shall take an active part in political
17 management or in political campaigns.

18 No act of the commission shall be valid except by
19 concurrence of the majority of its members.

20 The commission shall select one of its members to serve as
21 chairperson.

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1 The legislature shall provide for the staff and operating
2 expenses of the commission in a separate budget. No member of
3 the commission shall receive any compensation for commission
4 services, but shall be allowed necessary expenses for travel,
5 board and lodging incurred in the performance of commission
6 duties.

7 The commission shall be attached to the judiciary branch of
8 the state government for purposes of administration, but the
9 commission shall be entirely independent, and shall hire and
10 retain its staff members, at its pleasure, without regard to the
11 civil service laws of the State.

12 The commission shall adopt rules, which shall have the
13 force and effect of law, to regulate the conduct of justices and
14 judges, but rules regulating the conduct of justices and judges
15 in effect on the effective date of this section shall remain in
16 effect until the commission adopts such rules.

17 The commission shall have authority to investigate and
18 conduct hearings concerning allegations of misconduct or
19 disability of justices or judges, and shall have the power and
20 authority to reprimand, discipline, suspend, with or without
21 salary, retire or permanently remove any justice or judge, as
22 provided by rules adopted by the commission. The commission

1 shall provide any justice or judge facing any sanction
2 appropriate notice and an opportunity to be heard with
3 representation by counsel at the justice or judge's own expense.
4 The commission shall have the right to keep all or any portion
5 of their proceedings confidential.

6 All decisions of the commission shall be final, and no
7 decision, act or procedure of the commission shall be subject to
8 appeal or challenge in any other proceeding or before any court,
9 except that the commission may, by rule, provide for motions for
10 reconsideration.

11 The commission may retain its own counsel, without regard
12 to any other law, or may, with the agreement of the attorney
13 general, obtain counsel from the attorney general.

14 In any case in which one or more members of the commission
15 is recused or disqualified, the commission shall notify the
16 governor, and governor shall make temporary appointments to the
17 commission for the purpose of hearing any such case, and such
18 persons temporarily appointed may be licensed attorneys, and may
19 reside in any county, notwithstanding any other provision of
20 this section.

21 The supreme court shall retain its current power to
22 reprimand, discipline, suspend, retire or remove from office any

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1 justice or judge in matters pending on the effective date of
 2 this section. The supreme court and the existing commission on
 3 judicial discipline shall assist in a fair and orderly
 4 transition of responsibilities to the commission upon the
 5 appointment of five members of the commission and shall provide
 6 funding and staff support until the staff and operating expenses
 7 of the commission are provided in a separate budget."

8 SECTION 3. Article VI of the Constitution of the State of
 9 Hawaii is amended by repealing section 5.

10 ["~~RETIREMENT, REMOVAL, DISCIPLINE~~

11 ~~Section 5. The supreme court shall have the power to~~
 12 ~~reprimand, discipline, suspend with or without salary, retire or~~
 13 ~~remove from office any justice or judge for misconduct or~~
 14 ~~disability, as provided by rules adopted by the supreme court.~~

15 ~~The supreme court shall create a commission on judicial~~
 16 ~~discipline which shall have authority to investigate and conduct~~
 17 ~~hearings concerning allegations of misconduct or disability and~~
 18 ~~to make recommendations to the supreme court concerning~~
 19 ~~reprimand, discipline, suspension, retirement or removal of any~~
 20 ~~justice or judge."]~~

21 SECTION 4. The question to be printed on the ballot shall
 22 be as follows:
 23

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1 "Shall the Constitution of the State of Hawaii be amended
2 to establish an independent judicial conduct commission
3 with the power to regulate the conduct of justices and
4 judges and to reprimand, discipline, suspend, retire, or
5 remove justices or judges from office for misconduct or
6 disability?"

7 SECTION 5. Constitutional material to be repealed is
8 bracketed and stricken. New constitutional material is
9 underscored.

10 SECTION 6. These amendments shall take effect upon
11 compliance with article XVII, section 3, of the Constitution of
12 the State of Hawaii.

13
14 INTRODUCED BY: _____

Calvin K. Iy

BY REQUEST

JAN 22 2008

Report Title:

CONSTITUTIONAL AMENDMENT; JUDICIAL MISCONDUCT OR DISABILITY.

Description:

Amends Hawaii's Constitution to establish an independent
Judicial Conduct Commission.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT PROPOSING AMENDMENTS TO ARTICLE VI OF THE CONSTITUTION OF THE STATE OF HAWAII.

PURPOSE: Eliminate the current Commission on Judicial Discipline created by the Supreme Court, and establish an independent Judicial Conduct Commission, attached to the Judiciary Branch for administrative purposes.

MEANS: Add a new section to article VI of the State Constitution, and repeal section 5 of article VI of the State Constitution.

JUSTIFICATION: Currently, section 5 of article VI of the State Constitution provides that the power to reprimand, discipline, suspend, retire, or remove judges from office, for misconduct to disability, rests with the supreme court and a commission established by the supreme court. The power to discipline or remove justices and judges must be exercised by an independent commission, and not by justices themselves.

Impact on the public: Public confidence in the process of regulating the conduct of and disciplining judges will be significantly enhanced by having a commission with unquestioned independence.

Impact on the department or other agencies: The Judicial Conduct Commission shall be attached to the Judiciary Branch for administrative purposes. The Supreme Court and the existing Commission on Judicial Discipline shall provide funding and staff support until a separate budget is established for the judicial conduct commission.

GENERAL FUND: \$_____ for staff and operating expenses of the Judicial Conduct Commission.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary

EFFECTIVE DATE: Upon compliance with article XVII, section
3, of the Constitution of the State of
Hawaii.