
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 Hawaii Constitution provides that the power to reprimand,
3 discipline, suspend, retire, or remove justices or judges from
4 office, for misconduct or disability, rests with the supreme
5 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 Hawaii Constitution is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:



1 "JUDICIAL CONDUCT COMMISSION

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

20 The members of the commission shall be selected and shall
21 operate in a wholly nonpartisan manner. One of the governor's
22 initial appointees, one of the president of the senate's initial



1 appointees, and one of the speaker of the house of
2 representatives' initial appointees shall serve for a term of
3 six years, and one of the initial appointees of each shall serve
4 for a term of two years. Each of the persons initially elected
5 to the commission shall serve for a term of four years. After
6 the initial formation of the commission, elections and
7 appointments to the commission shall be for staggered terms of
8 six years each. Notwithstanding the foregoing, no member of the
9 commission shall serve for more than six years on the
10 commission.

11 Each member of the commission shall be not less than
12 eighteen years of age, and a resident of the State and a citizen
13 of the United States, and except as set forth in this section:

14 (1) There shall be no other restrictions on who may serve
15 on the commission; and

16 (2) Serving on the commission shall not act to disqualify
17 any commissioner from any other service or office.

18 No member shall run for or hold any other elected office
19 under the United States, the State, or its political
20 subdivisions. No member shall take an active part in political
21 management or in political campaigns.



1 No act of the commission shall be valid except by
2 concurrence of the majority of its members.

3 The commission shall select one of its members to serve as
4 chairperson.

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

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

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

21 The commission shall have authority to investigate and
22 conduct hearings concerning allegations of misconduct or



1 disability of justices or judges, and shall have the power and
2 authority to reprimand, discipline, suspend, with or without
3 salary, retire or permanently remove any justice or judge, as
4 provided by rules adopted by the commission. The commission
5 shall provide any justice or judge facing any sanction
6 appropriate notice and an opportunity to be heard with
7 representation by counsel at the justice or judge's own expense.
8 The commission shall have the right to keep all or any portion
9 of their proceedings confidential.

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

15 A final decision of the commission may be appealed by the
16 judge or justice. An appeal by the judge shall be to the
17 supreme court. An appeal by a justice of the supreme court
18 shall be to a panel of five judges of the intermediate appellate
19 court, chosen by lot, whose decision may not be appealed to the
20 supreme court.



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

4 In any case in which one or more members of the commission
5 is recused or disqualified, the commission shall notify the
6 governor, and governor shall make temporary appointments to the
7 commission for the purpose of hearing any such case, and such
8 persons temporarily appointed may be licensed attorneys, and may
9 reside in any county, notwithstanding any other provision of
10 this section.

11 The supreme court shall retain its current power to
12 reprimand, discipline, suspend, retire, or remove from office
13 any justice or judge in matters pending on the effective date of
14 this section. The supreme court and the existing commission on
15 judicial discipline shall assist in a fair and orderly
16 transition of responsibilities to the commission upon the
17 appointment of five members of the commission and shall provide
18 funding and staff support until the staff and operating expenses
19 of the commission are provided in a separate budget."

20 SECTION 3. Article VI, Section 5, of the Hawaii
21 Constitution is repealed.



1 ["~~RETIREMENT, REMOVAL, DISCIPLINE~~

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

6 ~~The supreme court shall create a commission on judicial~~
7 ~~discipline which shall have authority to investigate and conduct~~
8 ~~hearings concerning allegations of misconduct or disability and~~
9 ~~to make recommendations to the supreme court concerning~~
10 ~~reprimand, discipline, suspension, retirement or removal of any~~
11 ~~justice or judge."]~~

12 SECTION 4. The question to be printed on the ballot shall
13 be as follows:

14 "Shall the Constitution of the State of Hawaii be amended
15 to establish an independent judicial conduct commission
16 with the power to regulate the conduct of justices and
17 judges and to reprimand, discipline, suspend, retire, or
18 remove justices or judges from office for misconduct or
19 disability?"

20 SECTION 5. Constitutional material to be repealed is
21 bracketed and stricken. New constitutional material is
22 underscored.



1 SECTION 6. These amendments shall not take effect upon
2 compliance with article XVII, section 3, of the Hawaii
3 Constitution.



Report Title:

Constitutional Amendment; Judicial Misconduct Or Disability

Description:

Proposes a constitutional amendment to eliminate the existing Commission on Judicial Discipline created by the Supreme Court with an independent Judicial Conduct Commission. (HB3056 HD1)

