

2 **2SSB 5696** - S AMD - 180
3 By Senator Kline

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to
8 adopt, to the extent that it is consistent with Article IV, section 31
9 of the state Constitution, the model rules for judicial disciplinary
10 enforcement adopted by the standing committee of professional
11 discipline, judicial administration division, of the American bar
12 association.

13 NEW SECTION. **Sec. 2.** (1) The commission shall divide itself into
14 a hearing panel of seven members and an investigative panel of four
15 members. Investigative and hearing panels include members from each
16 category of membership, including a lawyer, a judge, and public
17 members. Membership on the panels may rotate in a manner determined by
18 the commission provided that no member shall sit on both the hearing
19 and investigative panel for the same proceeding. Panels shall meet
20 when scheduled by the commission. The full commission shall meet
21 periodically as determined by the commission to consider administrative
22 matters. Meetings of the commission other than periodic meetings may
23 be called by the chair upon the chair's own motion and shall be called
24 by the chair upon the written request of three members of the
25 commission.

26 (2) The commission shall elect one of its members to serve as chair
27 and another to serve as vice-chair for such terms as the commission
28 shall determine. The vice-chair shall perform the duties of the chair
29 whenever the chair is absent or unable to act.

30 (3) Seven members of the full commission, five members of a hearing
31 panel, and three members of an investigative panel shall constitute a
32 quorum for the transaction of business. A quorum of the commission or
33 any panel must include one member from each category of membership.
34 Alternate members should be appointed where necessary to fulfill the
35 quorum requirements.

1 (4)(a) The commission shall have the duty and authority to:
2 (i) Adopt its own rules of procedure for discipline and incapacity
3 proceedings subject to the approval of the supreme court;
4 (ii) Propose amendments to the code of judicial conduct;
5 (iii) Appoint disciplinary counsel; and
6 (iv) Appoint commission counsel.
7 (b) In addition to the duties assigned to disciplinary counsel and
8 commission counsel, the commission may delegate to either the
9 disciplinary counsel or commission counsel the duty and authority to:
10 (i) Maintain the commission's records;
11 (ii) Maintain statistics concerning the operation of the commission
12 and make them available to the commission and the highest court;
13 (iii) Prepare the commission's budget for its approval and
14 administer the funds;
15 (iv) Notify the appropriate appointing authority of vacancies on
16 the commission;
17 (v) Prepare an annual report of the commission's activities for
18 presentation to the highest court and the public; and
19 (vi) Inform the public of the existence and operation of the
20 judicial discipline system, including the commission's address and
21 telephone number and the disposition of each matter in which public
22 discipline is imposed.
23 (c) An investigative panel shall have the duty and authority to:
24 (i) Review the recommendations of disciplinary counsel after
25 preliminary investigation and either authorize a full investigation or
26 dismiss the complaint; and
27 (ii) Review the recommendations of disciplinary counsel after full
28 investigation and approve, disapprove, or modify the recommendations.
29 (d) A hearing panel shall have the duty and authority to:
30 (i) Rule on prehearing motions, conduct hearings on formal charges
31 and make findings, conclusions, and recommendations to the supreme
32 court for sanctions or dismiss the case;
33 (ii) Appoint a hearing officer or a subpanel of the hearing panel
34 to conduct the hearing in appropriate cases; and
35 (iii) Review findings of the hearing officer or subpanel if one has
36 been appointed, and make findings, conclusions, and recommendations to
37 the supreme court for sanctions, or dismiss the case.

1 (5) A member of the commission shall recuse himself or herself in
2 any matter in which recusal would be required of a judicial officer
3 under the code of judicial conduct.

4 (6) If a complaint is filed against a member of the commission who
5 is a judge subject to the jurisdiction of the commission, the
6 commission member against whom the complaint has been filed shall not
7 participate in the investigation or adjudication of the matter.

8 NEW SECTION. **Sec. 3.** (1) The commission shall appoint
9 disciplinary counsel. Full-time disciplinary counsel shall not
10 otherwise engage in the practice of law or serve in a judicial
11 capacity. Disciplinary counsel shall not be removed from office except
12 upon the concurrence of both the supreme court and the commission.

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

14 (a) Receive and screen complaints, refer complaints to other
15 agencies when appropriate, conduct preliminary investigations,
16 recommend to an investigative panel of the commission and upon
17 authorization conduct full investigations, notify complainants about
18 the status and disposition of their complaints, make recommendations to
19 an investigative panel on the disposition of complaints after full
20 investigation, file formal charges when directed to do so by an
21 investigative panel, prosecute formal charges, and file notices of
22 exceptions to the findings, conclusions, recommendations for sanctions,
23 or orders of dismissal of hearing panels;

24 (b) Maintain permanent records of the operations of disciplinary
25 counsel's office, including receipt of complaints, screening,
26 investigation, and filing of formal charges in judicial discipline and
27 incapacity matters;

28 (c) Compile statistics to aid in the administration of the system,
29 including but not limited to a log of all complaints received,
30 investigative files, and statistical summaries of docket processing and
31 case dispositions;

32 (d) Prepare disciplinary counsel's budget for submission to the
33 commission and administer the funds;

34 (e) Employ and supervise other members of disciplinary counsel's
35 staff;

36 (f) Employ private investigators or experts as necessary to
37 investigate and process matters before the commission and the supreme
38 court; and

1 (g) Perform other duties at the direction of the commission.

2 NEW SECTION. **Sec. 4.** (1) The commission may appoint a commission
3 counsel to assist the commission.

4 (2) The commission may delegate functions to the commission
5 counsel, including but limited to the duty and authority to:

6 (a) Advise the hearing panel during its deliberations and draft
7 decisions, orders, reports, and other documents on behalf of the
8 hearing panel;

9 (b) Employ and supervise other staff necessary to the performance
10 of the commission's duties; and

11 (c) Perform other duties at the direction of the commission.

12 NEW SECTION. **Sec. 5.** (1) The grounds for discipline are:

13 (a) Any conduct constituting a violation of the code of judicial
14 conduct or other applicable ethics codes; or

15 (b) A willful violation of a valid order of the supreme court,
16 commission, or panels of the commission in a proceeding under this
17 chapter, a willful failure to appear personally as directed, or a
18 knowing failure to respond to a lawful demand from a disciplinary
19 authority.

20 (2) The following sanctions may be imposed upon a respondent who
21 has committed misconduct:

22 (a) Removal by the supreme court;

23 (b) Suspension by the supreme court;

24 (c) Imposition by the supreme court of limitations on the
25 performance of judicial duties;

26 (d) Imposition of lawyer discipline by the supreme court;

27 (e) Public reprimand by the supreme court;

28 (f) Private admonition by an investigative panel of the commission
29 with the consent of the judge, provided that a private admonition may
30 be used in subsequent proceedings as evidence of prior misconduct
31 solely upon the issue of the sanction to be imposed; and

32 (g) Deferred discipline agreement.

33 NEW SECTION. **Sec. 6.** Charges of misconduct and grounds for
34 transfer to and from incapacity inactive status shall be established by
35 clear and convincing evidence. The burden of proof in proceedings
36 seeking transfer from incapacity inactive status is on the judge.

1 NEW SECTION. **Sec. 7.** Except as otherwise provided in this
2 chapter, the rules of evidence and the rules of civil procedure apply
3 in judicial discipline and incapacity cases.

4 NEW SECTION. **Sec. 8.** The judge shall be entitled to retain
5 counsel and to have the assistance of counsel at every stage of these
6 proceedings.

7 NEW SECTION. **Sec. 9.** Members of the commission, hearing officers,
8 and commission counsel shall not engage in ex parte communications
9 regarding a case, except that before making a determination to file
10 formal charges in a case, members of the investigative panel assigned
11 to that case may communicate with disciplinary counsel as required to
12 perform their duties in accordance with these rules.

13 NEW SECTION. **Sec. 10.** (1) Proceedings.

14 (a) Before the filing and service of formal charges, all
15 proceedings shall be confidential.

16 (b) After the filing and service of formal charges, all proceedings
17 shall be public except incapacity proceedings.

18 (2)(a) Before the filing and service of formal charges, all
19 information relating to a complaint that has not been dismissed shall
20 be held confidential by the commission and disciplinary counsel and
21 their staffs, except that the commission may disclose information:

22 (i) When the commission has determined that there is a need to
23 notify another person to protect that person or to notify a government
24 agency in order to protect the public or the administration of justice;
25 or

26 (ii) Upon waiver in writing by the judge.

27 (b) All information relating to a complaint that has been dismissed
28 without formal charges being filed shall be held confidential by the
29 commission and disciplinary counsel and their staffs.

30 (c) Disciplinary counsel's work product, commission deliberations,
31 and records of the commission's deliberations shall not be disclosed.

32 NEW SECTION. **Sec. 11.** Communications to the commission,
33 commission counsel, disciplinary counsel, or their staffs relating to
34 misconduct or incapacity and testimony given in the proceedings shall
35 be absolutely privileged, and no civil lawsuit predicated thereon may

1 be instituted against any complainant or witness. Members of the
2 commission, commission counsel and staff, and disciplinary counsel and
3 staff shall be absolutely immune from civil suit for all conduct in the
4 course of their official duties.

5 NEW SECTION. **Sec. 12.** Service upon the judge of formal charges in
6 any disciplinary or incapacity proceeding or of notice that a complaint
7 has been received shall be made by personal service upon the judge or
8 judge's counsel by any person authorized by the chair of the commission
9 or by registered or certified mail to the judge's address of record.
10 Delivery of all other papers or notices shall be made in accordance
11 with the rules of civil procedure.

12 NEW SECTION. **Sec. 13.** (1) Oaths and affirmations may be
13 administered by any member of the commission, disciplinary counsel in
14 matters under full investigation, or any other person authorized by
15 law.

16 (2) After a full investigation is authorized, disciplinary counsel
17 may compel by subpoena the attendance of the judge or witnesses and the
18 production of pertinent books, papers, and documents for purposes of
19 investigation. The investigative panel may issue subpoenas for
20 specific witnesses or documents at the request of a judge under
21 investigation.

22 (3) After formal charges are filed, disciplinary counsel and
23 respondent may compel by subpoena the attendance of witnesses and the
24 production of pertinent books, papers, and documents at a deposition or
25 hearing held under this chapter.

26 (4) Upon proper application, the superior court of the county in
27 which the attendance or production is required may enforce the
28 attendance and testimony of any witnesses and the production of any
29 documents subpoenaed.

30 (5) Any attack on the validity of a subpoena shall be heard and
31 determined by the investigative or hearing panel before which the
32 matter is pending or by the court wherein enforcement of the subpoena
33 is being sought. Any resulting order is not appealable prior to entry
34 of a final order in the proceeding.

35 (6) Subpoena fees and costs shall be the same as those provided for
36 in proceedings in the superior court.

1 NEW SECTION. **Sec. 14.** (1) Without the necessity of commission
2 action, the supreme court may immediately place a judge on interim
3 suspension upon notice of the filing of an indictment, information, or
4 complaint charging the judge with a serious crime under state or
5 federal law.

6 (2) A "serious crime" is any felony or lesser crime that reflects
7 adversely on the judge's honesty, trustworthiness, or fitness as a
8 judge in other respects, or any crime a necessary element of which, as
9 determined by the statutory or common law definition of the crime,
10 involves interference with the administration of justice, false
11 swearing, misrepresentation, fraud, deceit, bribery, extortion,
12 misappropriation, theft, or an attempt, conspiracy, or solicitation of
13 another to commit a serious crime.

14 (3) Upon receipt of sufficient evidence demonstrating that a judge
15 poses a substantial threat of serious harm to the public or to the
16 administration of justice, the supreme court may transfer the judge to
17 incapacity inactive status or suspend the judge pending a final
18 determination in any proceeding under this chapter.

19 (4) A judge suspended or transferred to incapacity inactive status
20 may apply to the supreme court for reconsideration of the order.

21 (5) Interim suspension of a judge shall not preclude action by the
22 commission on the same conduct that was the basis for the felony or
23 misdemeanor charge. Acquittal, dismissal, or conviction of the
24 criminal charge shall not preclude proceedings by the commission on the
25 conduct that was the basis for the charge.

26 NEW SECTION. **Sec. 15.** Disciplinary counsel shall provide written
27 acknowledgment of every complaint, if the complainant is known, and
28 notify the complainant in writing of the final disposition of a
29 proceeding under this chapter. Notification in writing shall be mailed
30 within ten days of the order disposing of the proceeding.

31 NEW SECTION. **Sec. 16.** (1) Disciplinary counsel shall evaluate all
32 information coming to disciplinary counsel's attention by complaint or
33 from other sources that alleges judicial misconduct or incapacity. If
34 the information would not constitute misconduct or incapacity if it was
35 true, disciplinary counsel shall dismiss the complaint, subject to
36 review by an investigative panel or, if appropriate, refer the matter
37 to another agency. If the information raises allegations that would

1 constitute judicial misconduct or incapacity if true, disciplinary
2 counsel shall conduct a preliminary investigation.

3 (2)(a) Disciplinary counsel may conduct interviews and examine
4 evidence to determine whether grounds exist to believe the allegations
5 of complaints, provided that no subpoena shall issue to obtain
6 testimony or evidence until an investigative panel of the commission
7 authorizes a full investigation.

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

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

19 (3)(a) Within ten days after the investigative panel authorizes a
20 full investigation, disciplinary counsel shall give the following
21 notice to the judge:

22 (i) A specific statement of the allegations being investigated and
23 the canons or laws allegedly violated, with the provision that the
24 investigation can be expanded if appropriate;

25 (ii) The judge's duty to respond;

26 (iii) The judge's opportunity to meet with disciplinary counsel;
27 and

28 (iv) The name of the complainant unless the investigative panel
29 determines that there is good cause to withhold that information.

30 (b) The investigative panel may defer the giving of notice but,
31 when notice is deferred, disciplinary counsel must give notice to the
32 judge before making a recommendation as to a disposition.

33 (c) Disciplinary counsel may request that the judge file a written
34 response within thirty days after service of the notice.

35 (d) Before the investigative panel determines its disposition of
36 the complaint, either disciplinary counsel or the judge may request an
37 appearance before disciplinary counsel to respond to questions. The
38 appearance shall be on the record. If disciplinary counsel requests

1 the judge's appearance, disciplinary counsel must give the judge twenty
2 days' notice and the testimony shall be sworn.

3 (c) Disciplinary counsel is authorized to issue subpoenas once a
4 full investigation has been approved. Disciplinary counsel shall
5 conduct all investigations.

6 (4)(a) Upon the conclusion of a full investigation, disciplinary
7 counsel may recommend to the investigative panel:

8 (i) Dismissal;

9 (ii) Private admonition or deferred discipline agreement;

10 (iii) The filing of formal charges;

11 (iv) The filing of a petition for transfer to incapacity inactive
12 status;

13 (v) Referral to an appropriate agency; or

14 (vi) A stay.

15 (b) The investigative panel may adopt, reject, or modify the
16 recommendations of disciplinary counsel. If the investigative panel
17 finds a violation for which the imposition of discipline is not
18 warranted it may dismiss. If the investigative panel finds that there
19 is reasonable cause to believe the judge committed misconduct:

20 (i) It may propose a private admonition or deferred discipline
21 agreement to the respondent and if the respondent consents, it shall
22 admonish the respondent or implement the deferred disciplinary
23 agreement. In addition, it may assess costs against the respondent as
24 a condition of the private admonition or deferred disciplinary
25 agreement. If the respondent does not consent to the admonishment or
26 the deferred discipline, the investigative panel may direct
27 disciplinary counsel either to file formal charges or dismiss the
28 complaint; or

29 (ii) It may direct disciplinary counsel to file formal charges.

30 (5) Whenever a witness invokes his or her privilege against self-
31 incrimination as a basis for refusing to answer a question or to
32 produce other evidence that may be relevant to a discipline or
33 incapacity proceeding, disciplinary counsel may apply to the superior
34 court for a grant of immunity from criminal prosecution and shall give
35 notice of the application to the prosecuting attorney of the
36 jurisdiction. If the court grants the order, the witness may not
37 refuse to comply with the order on the basis of the witness's privilege
38 against self-incrimination, but no testimony or other evidence
39 compelled under such an order shall be used against the witness in any

1 criminal case. The witness may be prosecuted for perjury or contempt
2 committed in answering or failing to answer in accordance with the
3 order.

4 NEW SECTION. **Sec. 17.** If a complaint has been dismissed, the
5 allegations made in that complaint shall not be used for any purpose in
6 any judicial or lawyer disciplinary proceeding against the judge. If
7 additional information becomes known to disciplinary counsel regarding
8 a complaint that has been dismissed before the filing of formal
9 charges, the allegations may be reinvestigated with permission of an
10 investigative panel.

11 NEW SECTION. **Sec. 18.** The formal charges shall give fair and
12 adequate notice of the nature of the alleged misconduct or incapacity.
13 Disciplinary counsel shall file the formal charges with the commission.
14 Disciplinary counsel shall cause a copy of the formal charges to be
15 served upon the respondent or respondent's counsel and shall file proof
16 of service with the commission.

17 NEW SECTION. **Sec. 19.** (1) The respondent shall file a written
18 answer with the commission and serve a copy on disciplinary counsel
19 within twenty days after service of the formal charges, unless the time
20 is extended by the hearing panel.

21 (2) The raising of a mental or physical condition as a defense
22 constitutes a waiver of medical privilege.

23 NEW SECTION. **Sec. 20.** (1) Failure to answer the formal charges
24 shall constitute an admission of the factual allegations.

25 (2) If the respondent should fail to appear when specifically so
26 ordered by the hearing panel or the supreme court, the respondent shall
27 be deemed to have admitted the factual allegations which were to be the
28 subject of the appearance and to have conceded the merits of any motion
29 or recommendations to be considered at the appearance. Absent good
30 cause, the hearing panel or supreme court shall not continue or delay
31 proceedings because of the respondent's failure to appear.

32 NEW SECTION. **Sec. 21.** (1) Within twenty days of the filing of an
33 answer, disciplinary counsel and respondent shall exchange the names
34 and addresses of all persons known to have knowledge of the relevant

1 facts. Disciplinary counsel or the respondent may withhold such
2 information only with permission of the chair of the hearing panel or
3 the chair's designee, who can authorize withholding of the information
4 only for good cause shown, taking into consideration the materiality of
5 the information possessed by the witness and the position the witness
6 occupies in relation to the judge. The chair's review of the
7 withholding request is to be in camera, but disciplinary counsel must
8 advise respondent of the request without disclosing the subject of the
9 request. The hearing panel shall set a date for the exchange of the
10 names and addresses of all witnesses the parties intend to call at the
11 hearing. Disciplinary counsel and respondent may take depositions only
12 of witnesses to be called at the hearing and other witnesses who are
13 unavailable to testify. Depositions of other persons may be taken only
14 with permission of the chair of the hearing panel or the chair's
15 designee and only for good cause shown.

16 (2) Disciplinary counsel and respondent shall exchange:

17 (a) Nonprivileged evidence relevant to the formal charges,
18 documents to be presented at the hearing, witness statements, and
19 summaries of interviews with witnesses who will be called at the
20 hearing; and

21 (b) Other material only upon good cause shown to the chair of the
22 hearing panel.

23 (3) Disciplinary counsel shall provide respondent with exculpatory
24 evidence relevant to the formal charges.

25 (4) Both parties have a continuing duty to supplement information
26 required to be exchanged under this section.

27 (5) All discovery shall be completed within sixty days of the
28 filing of the answer.

29 (6) The hearing panel may preclude either party from calling a
30 witness at the hearing if the party has not provided the opposing party
31 with the witness's name and address, any statements taken from the
32 witness, or summaries of any interviews with the witness.

33 (7) Disputes concerning discovery shall be determined by the
34 hearing panel before whom the matter is pending. The decisions of the
35 hearing panel may not be appealed before the entry of the final order.

36 (8) Proceedings under this chapter are not subject to the rules of
37 civil procedure regarding discovery except those rules relating to
38 depositions and subpoenas.

1 NEW SECTION. **Sec. 22.** (1) At any time after the filing of formal
2 charges and before final disposition, the respondent may agree with
3 disciplinary counsel that the respondent shall admit to any or all of
4 the formal charges in exchange for a stated sanction. The agreement
5 shall be submitted to the hearing panel of the commission assigned to
6 the case, which shall either:

7 (a) Reject the agreement; or

8 (b) Submit the agreement to the supreme court for approval.

9 (2) If the stated sanction is rejected by the hearing panel or the
10 supreme court, the admission shall be withdrawn and cannot be used
11 against the respondent in any proceedings.

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

14 (a) The respondent consents to the sanction;

15 (b) The consent is freely and voluntarily rendered;

16 (c) There is presently pending a proceeding involving allegations
17 of misconduct; and

18 (d) The facts set forth in the affidavit are true.

19 (4) The commission shall file the affidavit with the supreme court.
20 The affidavit shall remain confidential until it is accepted by the
21 supreme court. The supreme court shall either reject the agreement or
22 enter the order disciplining the respondent. The final order of
23 discipline shall be based upon the formal charges and the conditional
24 admission.

25 NEW SECTION. **Sec. 23.** (1) Upon receipt of the respondent's answer
26 or upon expiration of the time to answer, the hearing panel of the
27 commission shall schedule a public hearing and notify disciplinary
28 counsel and respondent of the date, time, and place of the hearing.

29 (2) The hearing shall be conducted by the hearing panel of the
30 commission, a subpanel of the hearing panel, or a hearing officer.

31 (3)(a) All testimony shall be under oath.

32 (b) Disciplinary counsel shall present evidence on formal charges.

33 (c) Disciplinary counsel may call the respondent as a witness.

34 (d) Both parties shall be permitted to present evidence and produce
35 and cross-examine witnesses.

36 (e) The hearing shall be recorded verbatim. Whenever a transcript
37 is requested by respondent, disciplinary counsel, a member of the
38 hearing panel, or the supreme court, a transcript of the hearing shall

1 be produced promptly and shall be provided to the respondent without
2 cost.

3 (f) Disciplinary counsel and the respondent may submit proposed
4 findings, conclusions, and recommendations for sanction or order of
5 dismissal to the hearing panel.

6 (g) If a subpanel or hearing officer is used, the findings are to
7 be submitted to the hearing panel.

8 (4) The hearing panel shall either dismiss the case or recommend a
9 sanction to the supreme court. The hearing panel shall decide a matter
10 only upon the concurrence of a majority of all members of the panel.

11 (5) Within thirty days after the hearing or after the filing of the
12 transcript if one was requested, the hearing panel shall file with the
13 supreme court the record of the proceeding and a report setting forth
14 a written summary, proposed findings of fact, conclusions of law, any
15 minority opinions, and the order of dismissal or recommendation for
16 sanction. The hearing panel shall at the same time serve the report
17 upon the respondent and disciplinary counsel.

18 (6) Within ten days of receipt of the hearing panel's report, the
19 respondent and disciplinary counsel may file with the supreme court
20 notice of exceptions to the findings, conclusions, or recommendations
21 for sanction or order of dismissal of the hearing panel. The failure
22 to file notice of exceptions constitutes acceptance of the findings of
23 fact, conclusions of law, and order of dismissal or recommendation for
24 sanction.

25 NEW SECTION. **Sec. 24.** (1)(a) The clerk of the supreme court shall
26 docket for expedited consideration any case in which the commission
27 recommended a sanction or a notice of exceptions was filed.

28 (b) In cases the commission has dismissed to which no exceptions
29 were filed, the dismissal shall be final if the supreme court has not
30 ordered a review within fifteen days.

31 (2)(a) Disciplinary counsel and the respondent shall file briefs in
32 a timely manner as determined by the supreme court.

33 (b) If the supreme court desires an expansion of the record or
34 additional findings, it shall remand the case to the hearing panel with
35 appropriate directions, retain jurisdiction, and withhold action
36 pending receipt of the additional filing.

37 (c) The supreme court may order additional briefs or oral arguments
38 as to the entire case or specified issues.

1 (3) If during review by the supreme court the commission receives
2 another complaint against the respondent, the disciplinary counsel
3 shall advise the supreme court. The supreme court may stay its review
4 pending the commission's determination of the second complaint. The
5 supreme court may impose a single sanction covering all recommendations
6 for discipline from the commission against a respondent.

7 (4)(a) The supreme court shall file a written decision dismissing
8 the case or imposing a sanction. All decisions issued by the supreme
9 court shall be published in the official reports for the guidance of
10 other judges and for public information.

11 (b) The supreme court may accept, reject, or modify in whole or in
12 part the findings and conclusions of the commission.

13 (c) The supreme court may assess costs against the respondent if it
14 finds the respondent committed misconduct.

15 NEW SECTION. **Sec. 25.** (1) An incapacity proceeding can be
16 initiated by complaint, by a claim of inability to defend in a
17 disciplinary proceeding, or by an order of involuntary commitment or
18 adjudication of incompetency.

19 (2) All incapacity proceedings shall be conducted in accordance
20 with the procedures for disciplinary proceedings, except:

21 (a) The purpose of the incapacity proceedings shall be to determine
22 whether the judge suffers from a physical or mental condition that
23 adversely affects the judge's ability to perform judicial functions;

24 (b) All of the proceedings shall be confidential;

25 (c) The commission may appoint a lawyer to represent the judge if
26 the judge is without representation; and

27 (d) If the supreme court concludes that the judge is incapacitated
28 to hold judicial office, it may enter any order appropriate to the
29 circumstances, the nature of the incapacity, and the probable length of
30 the period of incapacity, including:

31 (i) Retiring the judge;

32 (ii) Transferring the judge to judicial incapacity inactive status;

33 (iii) If the highest court concludes that the judge is
34 incapacitated to practice law, transferring the judge to lawyer
35 incapacity inactive status; and

36 (iv) If a judicial disciplinary proceeding against the judge is
37 pending and the highest court concludes that the judge is incapacitated
38 to defend, deferring the disciplinary proceeding.

1 (3) If a judge has been judicially declared incompetent or is
2 involuntarily committed on the grounds of incompetency or incapacity by
3 a final judicial order after a judicial hearing, the supreme court,
4 upon receipt of a certified copy of the order, shall enter an order
5 immediately transferring the judge to both lawyer and judicial
6 incapacity inactive status. A copy of the order shall be served, in a
7 manner the supreme court shall direct that complies with the rules of
8 civil procedure, upon the judge, his or her guardian, or the director
9 of the institution to which the judge has been committed.

10 (4)(a) If in the course of a disciplinary proceeding a judge
11 alleges an inability to assist in the defense due to mental or physical
12 incapacity, disciplinary counsel shall notify the supreme court. The
13 supreme court shall immediately transfer the judge to lawyer and
14 judicial incapacity inactive status pending a determination by the
15 supreme court of the incapacity. A determination by the commission
16 that the judge is able to assist in his or her own defense is
17 interlocutory and may not be appealed before entry of a final order in
18 the proceeding.

19 (b) If the supreme court determines the claim of inability to
20 defend is valid, the disciplinary proceeding shall be deferred. Any
21 investigation of the disciplinary complaint may continue. The judge
22 shall be retained on lawyer and judicial incapacity inactive status
23 until the supreme court grants a petition for reinstatement to active
24 status as a lawyer or judge. If the supreme court considering the
25 petition for reinstatement to active status determines that the
26 petition shall be granted, the supreme court shall also determine the
27 disposition of the interrupted disciplinary proceedings.

28 (c) If the supreme court determines that the claim of inability to
29 defend is invalid but that the judge is incapacitated to hold judicial
30 office, the disciplinary proceeding shall resume. The judge shall be
31 retained on judicial incapacity inactive status.

32 (d) The raising of mental or physical condition as a defense to or
33 in mitigation of formal charges constitutes a waiver of medical
34 privilege.

35 (5)(a) The hearing panel shall designate one or more qualified
36 medical, psychiatric, or psychological experts to examine the judge
37 prior to the hearing on the matter. The hearing panel may designate an
38 expert agreed upon by disciplinary counsel and the judge. The expert
39 or experts shall report to the supreme court and the parties.

1 (b) After receipt of the examination report, disciplinary counsel
2 and the judge may agree upon proposed findings of fact, conclusions,
3 and order. The stipulated disposition shall be submitted to the
4 hearing panel for a recommendation to the supreme court of approval or
5 rejection. The final decision on the recommendation shall be made by
6 the supreme court.

7 (c) If the supreme court accepts the stipulated disposition, the
8 supreme court shall enter an order in accordance with its terms. If
9 the stipulated disposition is rejected by the supreme court, it shall
10 be withdrawn and cannot be used against the judge in any proceedings.
11 If the supreme court rejects the stipulated disposition, the supreme
12 court shall order that the hearing proceed.

13 (6) Upon ordering a judge transferred to judicial incapacity
14 inactive status, a replacement judge may be appointed by the
15 appropriate appointing authority to serve during the period of
16 incapacity, whether the incapacity is temporary or permanent.

17 (7)(a) No judge transferred to incapacity inactive status may
18 resume active status except by order of the supreme court.

19 (b) Any judge transferred to incapacity inactive status shall be
20 entitled to petition for transfer to active status once a year or at
21 whatever shorter intervals the supreme court may direct in the order
22 transferring the judge to incapacity inactive status or any
23 modifications thereof.

24 (c) Upon the filing of a petition for transfer to active status,
25 the supreme court may take or direct whatever action it deems necessary
26 or proper to determine whether the incapacity has been removed,
27 including a direction for an examination of the judge by qualified
28 medical or psychological experts designated by the supreme court.

29 (d) With the filing of a petition for reinstatement to active
30 status, the judge shall be required to disclose the name of each
31 psychiatrist, psychologist, physician, and hospital or other
32 institution by whom or in which the judge has been examined or treated
33 since the transfer to incapacity inactive status. The judge shall
34 furnish to the supreme court written consent to the release of
35 information and records relating to the incapacity if requested by the
36 supreme court or court-appointed medical or psychological experts.

37 (e) If a judge transferred to lawyer incapacity inactive status on
38 the basis of a judicial determination of incompetence has been declared
39 to be competent, the supreme court may dispense with further evidence

1 that the incapacity to practice law has been removed and may
2 immediately direct reinstatement to active status as a lawyer.

3 NEW SECTION. **Sec. 26.** Sections 1 through 25 of this act are each
4 added to chapter 2.64 RCW."

5 **2SSB 5696** - S AMD - 180
6 By Senator Kline

7

8 On page 1, line 1 of the title, after "conduct;" strike the
9 remainder of the title and insert "and adding new sections to chapter
10 2.64 RCW."

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