

HOUSE BILL 782

By Garrett

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29, Part 2; Section 8-21-501; Title 17, Chapter 4, Part 3; Title 17, Chapter 5; Title 17, Chapter 2, Part 2; Title 17, Chapter 2, Part 3; Section 62-76-104; Section 63-1-130; Section 67-4-605 and Section 67-4-604, relative to the Tennessee board of judicial conduct.

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

SECTION 1. Tennessee Code Annotated, Section 4-29-239(a)(43), is amended by deleting the subdivision.

SECTION 2. Tennessee Code Annotated, Section 4-29-242(a), is amended by inserting the following as a new subdivision:

( ) Board of judicial responsibility, created by § 17-5-201;

SECTION 3. Tennessee Code Annotated, Section 8-21-501(a), is amended by deleting "board of judicial conduct" wherever the language appears and substituting "board of judicial responsibility".

SECTION 4. Tennessee Code Annotated, Section 17-2-202(b), is amended by deleting "board of judicial conduct" and substituting "board of judicial responsibility".

SECTION 5. Tennessee Code Annotated, Section 17-2-303(b)(1), is amended by deleting "board of judicial conduct" and substituting "board of judicial responsibility".

SECTION 6. Tennessee Code Annotated, Section 17-2-306(a), is amended by deleting "board of judicial conduct" wherever the language appears and substituting "board of judicial responsibility".

SECTION 7. Tennessee Code Annotated, Section 17-4-308(g), is amended by deleting "board of judicial conduct" wherever the language appears and substituting "board of judicial responsibility".

SECTION 8. Tennessee Code Annotated, Section 17-5-201, is amended by deleting the section and substituting the following:

(a) Notwithstanding § 4-29-112, the board of judicial conduct and the terms of the members serving cease to exist on July 1, 2019. Effective July 1, 2019, there is created the board of judicial responsibility to consist of eighteen (18) members to be appointed by the Tennessee supreme court in the following manner:

(1) One (1) current or former trial judge from each grand division of the state;

(2) One (1) current or former general sessions court judge from each grand division of the state;

(3) One (1) current or former municipal court judge;

(4) One (1) current or former juvenile court judge;

(5) Two (2) current or former court of appeals or court of criminal appeals judges;

(6) Two (2) other current or former judges; and

(7) Six (6) members of the public who are not salaried judges, as follows:

(A) Three (3) attorneys, one (1) from each grand division, who regularly practice in the courts of this state and may be members of the district attorneys general conference or members of the district public defenders conference (referred to in this part as "attorney members"); and

(B) Three (3) members of the public, one (1) from each grand division, who are neither judges nor attorneys (referred to in this part as "public members").

(b)

(1)

(A) The following members shall serve initial terms of one (1) year:

(i) Members appointed from the western grand division under subdivisions (a)(1) and (2);

(ii) Members appointed under subdivision (a)(5); and

(iii) Members appointed from the western grand division under subdivision (a)(7);

(B) The following members shall serve initial terms of two (2) years:

(i) Members appointed from the middle grand division under subdivisions (a)(1) and (2);

(ii) Members appointed under subdivision (a)(6); and

(iii) Members appointed from the middle grand division under subdivision (a)(7); and

(C) The following members shall serve initial terms of three (3) years:

(i) Members appointed from the eastern grand division under subdivisions (a)(1) and (2);

(ii) Members appointed under subdivisions (a)(3) and (4);

and

(iii) Members appointed from the eastern grand division under subdivision (a)(7).

(2) Subsequent terms of all members are for three (3) years.

(3) A member whose initial term is created by a vacancy and is less than three (3) years is eligible to serve an additional two (2) consecutive three-year terms.

(4) A member who has served the maximum term is eligible for reappointment after the expiration of three (3) years.

(5) The supreme court shall fill vacancies.

(c) The supreme court shall select the board chair. The board shall select a vice chair and select one (1) member to serve as a direct liaison to the members of the general assembly.

(d) The chair, or, in the absence of the chair, the vice chair shall appoint from the members of the board standing investigative panels of three members each to review the recommendations of disciplinary counsel. One such panel must consist of members who do not reside in the eastern grand division of the state; one such panel must consist of members who do not reside in the middle grand division of the state; and one such panel must consist of members who do not reside in the western grand division of the state. At least one (1) member from of each investigative panel must be a member other than a current judge, and no more than one (1) member of each investigative panel must be a public member. Membership on investigative panels must rotate in a manner to be determined by the chair. The chair shall not serve on investigative panels.

(e) The chair, or, in the absence of the chair, the vice chair shall assign an investigative panel to each case upon the submission of a written complaint or upon receipt by disciplinary counsel of information from a source other than a signed written complaint, if the board has determined the information sufficiently credible. The investigative panel assigned to a case must not include members who reside in the

same grand division of the state as the judge against whom the complaint has been made.

(f) A member of the board shall not serve on the investigative panel and the hearing panel for the same complaint. An investigative panel member shall not take part in any manner in which a judge similarly situated would have to recuse in accordance with Rule 10 of the Rules of the Supreme Court. However, the procedures set out in Rule 10 of the Rules of the Supreme Court are not applicable to motions to disqualify or for recusal. The party seeking the recusal of a board member from an investigative panel may petition the board chair. The party seeking recusal may appeal an adverse decision by the board chair to the vice chair of the board. The decision of the vice chair is final and not subject to further appeal. Alternative members may be appointed by the chair, or, in the absence of the chair, the vice chair to serve on an investigative panel in the event of a panel member's recusal. In making such appointments, due consideration must be given to the status of the recusing member, with the goal of maintaining the contemplated composition and balance of the panels' membership.

(g) 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.

(h) The chair, or, in the absence of the chair, the vice chair shall appoint from the members of the board three hearing panels of five (5) members to hear matters in accordance with part 3 of this chapter. One (1) such panel must consist of members

who do not reside in the eastern grand division of the state; one (1) such panel must consist of members who do not reside in the middle grand division of the state; and one (1) such panel must consist of members who do not reside in the western grand division of the state. Each panel must include at least one (1) but no more than two (2) public members. Membership on hearing panels must rotate in a manner to be determined by the chair. The chair, or, in the absence of the chair, the vice chair shall appoint a chair of each hearing panel. The chair of a hearing panel must be either a judge or an attorney member.

(i) A member of the board shall not serve on the investigative panel and the hearing panel for the same complaint. A hearing panel member shall not take part in any manner in which a judge similarly situated would have to recuse in accordance with Rule 10 of the Rules of the Supreme Court. However, the procedures set out in Rule 10 of the Rules of the Supreme Court are not applicable to motions to disqualify or for recusal. The party seeking the recusal of a board member may petition the hearing panel chair. The party seeking recusal may appeal an adverse decision by the hearing panel chair to the chair of the board, or, in the absence of the chair, the vice chair. The decision of the chair or vice chair is final and not subject to further appeal. Alternative members may be appointed by the chair, or, in the absence of the chair, the vice chair to serve on a hearing panel in the event of a panel member's recusal. In making such appointments, due consideration must be given to the status of the recusing member, with the goal of maintaining the contemplated composition and balance of the panels' membership.

(j) Upon the filing of formal charges by the disciplinary counsel, the chair, or, in the absence of the chair, the vice chair shall assign a hearing panel to each case. The

hearing panel assigned to a case must not include members who reside in the same grand division of the state as the judge against whom the charges have been filed.

(k) A hearing panel has the duty and authority to rule on prehearing motions, conduct hearings on formal charges, approve or reject offers of settlement; and make findings, conclusions, and impose sanctions or dismiss the case.

(l) An attorney member of the board shall not sit on any investigative or hearing panel if the attorney has ever appeared before the judge against whom the complaint is filed.

(m) The appointing authority, in making appointments pursuant to this section, shall make such appointments with a conscious intention of diversity with respect to race, including the dominant ethnic minority population, and gender.

SECTION 9. Tennessee Code Annotated, Section 17-5-202, is amended by deleting the section and substituting the following:

The board of judicial responsibility shall sit at such times and in such places as it may from time to time deem expedient.

SECTION 10. Tennessee Code Annotated, Section 17-5-203, is amended by deleting the section and substituting the following:

The board of judicial responsibility has full authority to adopt rules regulating the practice and procedure before the board. These rules must be made available for viewing on the administrative office of the court's website.

SECTION 11. Tennessee Code Annotated, Section 17-5-204, is amended by deleting the section and substituting the following:

The clerk of the supreme court serves as clerk of the board of judicial responsibility, and shall keep such records, minutes, and dockets as the board from time to time prescribes.

SECTION 12. Tennessee Code Annotated, Section 17-5-301, is amended by deleting "board of judicial conduct" in subsections (a) and (b) and substituting "board of judicial responsibility".

SECTION 13. Tennessee Code Annotated, Section 17-5-303(a), is amended by deleting "board of judicial conduct" and substituting "board of judicial responsibility".

SECTION 14. Tennessee Code Annotated, Section 17-5-310, is amended by deleting "board of judicial conduct" in subsections (a) and (b) wherever the language appears and substituting "board of judicial responsibility".

SECTION 15. Tennessee Code Annotated, Section 17-5-311, is amended by deleting "board of judicial conduct" in subsections (a) and (f) wherever the language appears and substituting "board of judicial responsibility", and by deleting "board of judicial conduct's" in subsection (a) and substituting "board of judicial responsibility's".

SECTION 16. Tennessee Code Annotated, Section 62-76-104(f)(2), is amended by deleting "board of judicial conduct" and substituting "board of judicial responsibility".

SECTION 17. Tennessee Code Annotated, Section 63-1-130(f)(2), is amended by deleting "board of judicial conduct" and substituting "board of judicial responsibility".

SECTION 18. Tennessee Code Annotated, Section 67-4-604(b)(2), is amended by deleting "Tennessee board of judicial conduct" and substituting "board of judicial responsibility".

SECTION 19. Tennessee Code Annotated, Section 67-4-605(c), is amended by deleting "board of judicial conduct" and substituting "board of judicial responsibility".

SECTION 20. The Tennessee Code Commission is requested to change references from "board of judicial conduct" to "board of judicial responsibility" as sections are amended and volumes are replaced.

SECTION 21. This act shall take effect upon becoming a law, the public welfare requiring it.