

No. 208PA15

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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THE NORTH CAROLINA	)	
STATE BAR,	)	
	)	
Plaintiff,	)	<u>BEFORE THE DISCIPLINARY</u>
	)	<u>HEARING COMMISSION OF</u>
v.	)	<u>THE NORTH CAROLINA</u>
	)	<u>STATE BAR</u>
JERRY R. TILLET,	)	15 DHC 7
	)	
Defendant.	)	

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DEFENDANT'S NEW REPLY BRIEF

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THE NORTH CAROLINA	)	
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Plaintiff,	)	<u>BEFORE THE DISCIPLINARY</u>
v.	)	<u>HEARING COMMISSION OF</u>
	)	<u>THE NORTH CAROLINA</u>
JERRY R. TILLET,	)	<u>STATE BAR</u>
	)	15 DHC 7
Defendant.	)	

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DEFENDANT'S NEW REPLY BRIEF

\*\*\*\*\*

Defendant Jerry R. Tillett (“Judge Tillett”) respectfully submits this New Reply Brief pursuant to Rule 28(h) of the North Carolina Rules of Appellate Procedure. The arguments contained herein are limited to a concise rebuttal of arguments made by Plaintiff, The North Carolina State Bar (the “State Bar”) in Plaintiff’s New Brief (“Plaintiff Brief”), filed on 15 August 2016.

## **FACTS ADJUDICATED BY DHC**

The adjudicated facts are the findings set forth in the JSC Public Reprimand. The State Bar adopted these findings by employing collateral estoppel to prevail on its motion for summary judgment. (See Supp. R. pp. 118-145) (State Bar motion for summary judgment); (Supp. R. p 188) (Disciplinary Hearing Commission (“DHC”) order on summary judgment). The conduct which the State Bar’s DHC has found to be subject to discipline under the State Bar’s Rules of Professional Conduct is the same conduct described in the JSC Public Reprimand, not the version alleged by the State Bar in its new brief.

The State Bar’s statement of facts is largely borrowed from allegations in its complaint, and is not based on the adjudicated facts. By way of example, the State Bar’s description of Judge Tillett’s issuance of an order requiring the preservation of copies of some Town personnel records is incomplete and therefore misleading in that it ignores the finding in the JSC Public Reprimand that Tillett acted under the belief that a legal action was pending to remove the KDH Chief of Police.<sup>1</sup>

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<sup>1</sup> Several of the State Bar’s factual recitations go beyond the findings of the JSC Public Reprimand. See ¶¶ 2, 5, 9, 11,12, 13 and 14.

The acts for which the State Bar proposes to discipline Tillett were committed by him as a superior court judge, not as a lawyer. The conduct described in the JSC's Public Reprimand related to how others perceived Tillett's use of judicial power and was only sanctionable because Tillett is a superior court judge. Only judges (not lawyers) possess and use judicial power. The JSC Public Reprimand fails to find any conduct by Tillett as a *lawyer* that is sanctionable under the Rules of Professional Conduct; nor did it find him to be dishonest or untrustworthy. A lawyer engaging in private meetings with public officials, law enforcement officers and attorneys is not sanctionable conduct under the Rules of Professional Conduct. Nor is writing letters to public officials about complaints received about these public officials or drafting and/or entering orders. Moreover, the conduct for which Tillett has been disciplined by the JSC does not reflect adversely on Tillett's honesty or trustworthiness as a *lawyer*.

Among the JSC's findings were that Judge Tillett's conduct created a public *perception* of a conflict of interest. (R. p. 36, ¶ 9). There was no finding of an actual conflict of interest. Moreover, Judge Tillett "expressed regret for his conduct and assured the [JSC] that he will

exercise caution and restraint in the future.” (R. p. 36, ¶ 10). There are no allegations by the State Bar that Judge Tillett continued to engage in the type of conduct for which he was disciplined in the JSC’s Public Reprimand.

## **ARGUMENT**

### **I. THE STATE BAR’S POSSESSION AND USE OF JUDGE TILLETT’S JSC FILE VIOLATES N.C. GEN. STAT. § 7A-377 (2012).**

In response to Judge Tillett’s argument that the State Bar improperly obtained possession of Tillett’s JSC file and is prosecuting him based on the file, the State Bar contends that the undersigned’s argument “has no basis in fact or law.” (State Bar. Br. p. 39). Despite subsequently acknowledging that the State Bar was relying upon the wrong statute and inapplicable JSC Rules, the State Bar persists in its amended new brief that the undersigned’s argument “has no basis in fact or law.” (Motion to Amend p. 2). The State Bar’s new argument, however, suffers from a similar defect as its previous argument. The affidavit of the then JSC counsel and former Director J. Christopher Heagarty, and the State Bar’s own admissions in their New Brief, provide a basis in fact for this argument. Mr. Heagarty’s affidavit is attached to



the Appendix at App. 1. The applicable version of N.C. Gen. Stat. § 7A-377 (a1) and (a4) (2012) provide a basis in law for this argument. A copy of this statute is attached to the Appendix at App. 5. This Court should therefore reject the State Bar's argument on this issue, and conclude that Judge Tillett's due process rights were violated.

The applicable provisions of N.C. Gen. Stat. § 7A-377 (2012) support Tillett's argument that the State Bar improperly obtained possession of his confidential JSC file and is improperly using it to prosecute him before the DHC. In its amended New Brief, the State Bar acknowledges that N.C. Gen. Stat. § 7A-377 (2012) applies to the Court's review of this issue. N.C. Gen. Stat. § 7A-377 (a1) and (a4) (2012) are the applicable sections that apply to Tillett's case, not subsection (a5) as the State Bar contends. N.C. Gen. Stat. § 7A-377 (a1) (2012) provides that all papers filed with the JSC and the JSC investigation are confidential unless waived by the judge, and are not subject to disclosures as public records. N.C. Gen. Stat. § 7A-377 (a4) (2012) provides that when a judge accepts a public reprimand, as Tillett did here, only the public reprimand is a public record. N.C. Gen. Stat. § 7A-377 (a1) (2012) continues to apply to protect as confidential all other papers and files of the JSC. The State

Bar has not alleged that Tillett waived the confidentiality of the JSC file or consented to the State Bar's possession and use of the JSC file – in fact the State Bar argues Tillett's consent is not necessary. (See State Bar's motion to amend brief, p. 2).

N.C. Gen. Stat. § 7A-377(a5) (2012) would only apply if Tillett rejected a public reprimand and the case proceeded to hearing before the JSC – which did not occur. Further, even if N.C. Gen. Stat. § 7A-377 (a5) (2012) applied, which it does not, the documents in the JSC's possession that would become public are only the notice and statement of charges, answer, and all other pleadings. The rest of the information mentioned in subsection (a5) would exist if a case progresses to the JSC for hearing or to the Supreme Court for a review and consideration of a JSC recommended decision – which are not applicable here. So even if subsection (a5) applies, it would not give the State Bar permission to possess from the JSC file the investigative statements collected by the JSC, documents and evidence provided to the JSC, work product of the JSC and its legal counsel, and other information obtained or created by the JSC during its investigation. According to the then JSC Counsel and former JSC Director, the State Bar possesses these types of documents

from Tillett's JSC file. (Supp. R. pp. 231-33, ¶¶ 8-10, 14). There is not a statute that would allow the State Bar to possess these documents without Tillett's consent, which the State Bar acknowledges he has not provided. Therefore, the State Bar violates N.C. Gen. Stat. § 7A-377 (a1) and (a4) (2012) by possessing and using Tillett's JSC file to prosecute him before the DHC.

Further, the State Bar's reliance on an administrative rule of the JSC does not provide the State Bar with a safe harbor for its possession and use of Tillett's confidential JSC file. The State Bar initially attempted to rely upon the version of JSC Rule 6 amended after the 2013 amendments to the Judicial Standards Act (Session Law 2013-404; Ap. 13), to support their position that they could possess Tillett's JSC file. This version of JSC Rule 6 was not in effect until after the issuance of Judge Tillett's public reprimand, and is therefore not applicable. The State Bar has recently conceded this in its motion to amend new brief filed on 23 August 2016.

The applicable version of Rule 6 (2007) is attached hereto (See App. 8). The State Bar argues that it properly possesses the file under Rule 6(a)(1)(D), which is an exception to the general rule that all JSC

proceedings, deliberations, investigative files, records, papers and matters submitted to the JSC are confidential. Rule 6(a)(1)(D) allows an exception to the general rule during the investigation and initial proceedings phase “when the Commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.” First, Rule 6(a) does not apply to this case – for it only applies [d]uring investigative and initial proceedings.” N.C. R. J. Stds. Comm. Rule 6(a) (2007). As stated in Mr. Heagarty’s affidavit, the State Bar obtained and possessed Tillett’s JSC file after the JSC investigative and initial proceedings phase was concluded – after the JSC had already issued a public reprimand. (See Supp. R. p. 230-31, ¶ 4).<sup>2</sup> The affidavit of the then Commission Counsel and former Executive Director of the JSC, Mr. Heagarty, provides ample evidentiary support for this conclusion. (Supp. R. pp. 230-33). Second, there is no evidence in the record to suggest that “the [Judicial Standards] Commission determined that there [was] a need to notify” the State Bar about Judge Tillett’s conduct in order to protect the public or the administration of

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<sup>2</sup> Notably, even if the current version of Rule 6 applies, a similar limitation is applicable under subsection (a): “During Investigative and Initial Disciplinary Recommendation Proceedings.” N.C. R. J. Stds. Comm. Rule 6(a) (2016).

justice, as would be required under Rule 6 in order for the JSC to disclose information in the JSC file to a third party or entity. N.C. Admin. N.C. R. J. Stds. Comm. Rule 6(a)(1)(D) (2007).

In addition, JSC Rule 6(b) (2007) applies after a public reprimand has been issued by the JSC, and subsection (b)(3) provides that “[t]he work product of the Commission members, its Executive Director, Commission Counsel and investigator *shall be confidential and shall not be disclosed.*” N.C. R. J. Stds. Comm. Rule 6(b)(3) (2007) (emphasis supplied). Despite this prohibition, as the affidavit of Mr. Heagarty demonstrates, the State Bar took possession of the JSC’s work-product after the issuance of the public reprimand. Supp. R. pp. 231-32, ¶¶ 8-10.

As established herein, Tillett’s contention that the State Bar’s possession and use of Tillett’s confidential JSC file violates N.C. Gen. Stat. § 7A-377 (a1) and (a4) (2012) is based in fact and law. Based upon the affidavit of Mr. Heagarty, as well as the law that actually applies to this issue, this Court should reject the State Bar’s arguments, and hold that Judge Tillett’s due process rights have been violated by the State Bar when it improperly or illegally obtained Judge Tillett’s file and used it for the purpose of prosecuting him before the DHC.

## **II. THE STATE BAR DOES NOT HAVE EXPRESS AUTHORITY TO DISCIPLINE A JUDGE FOR CONDUCT OF A JUDGE.**

The State Bar argues repeatedly that the Legislature has conferred upon it express authority to discipline a judge or justice of the General Court of Justice. This argument ignores the plain text of the statute upon which it relies (N.C. Gen. Stat. § 7A-410), as well as the context in which that statute was created.

Chapter 84 does not expressly state that the State Bar can discipline or disbar a sitting judge for conduct of a judge. In arguing its “express” authority from the General Assembly, the State Bar cites to N.C. Gen. Stat. § 7A-410. That statute describes the procedure to follow when a judge/justice or district attorney has been disbarred. N.C. Gen. Stat. § 7A-410. The statute provides that once all appeals under N.C. Gen. Stat. § 84-28 have been exhausted, the Governor shall declare the office (judicial or district attorney) vacant. *Id.*

This statute was enacted by the General Assembly in 2007, and became effective on 21 June 2007. *See* Session Law 2007-104 (S.B. 118). It is documented that this statute was enacted on the heels of the State Bar disbarring a then sitting district court judge for conduct that the

judge engaged in while in private practice, prior to becoming a judge. See *The N. Carolina State Bar v. Ethridge*, 188 N.C. App. 653, 654, 657 S.E.2d 378, 380 (2008). In *Ethridge*, the defendant had been elected to the district court bench in 2004. *Id.* at 655, 657 S.E.2d at 380. The State Bar alleged that in 2001 and 2002, while Ethridge was engaged in the private practice of law and prior to his election, that Ethridge took advantage of a client with dementia by appropriating money from the client. *Id.* The DHC ultimately disbarred the defendant for this attorney conduct on 16 November 2006. *Id.* at 654, 657 S.E.2d at 380.

The defendant, however, refused to vacate his judicial seat and appealed the decision to the Court of Appeals. Although he was not assigned by the Administrative Office of the Court at this time, Ethridge continued to draw a salary from the State and the State incurred expenses in assigning judges to cover his terms of court.<sup>3</sup> For whatever reason, interviews with the then JSC Director in January 2007 suggest

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<sup>3</sup> See <http://www.starnewsonline.com/news/20070110/disbarred-nc-judge-still-drawing-six-figure-salary> (last visited 18 August 2016). A copy of this article is attached at App. 11.

that the JSC was uncertain if it could cause his removal from the bench.<sup>4</sup> *See also*, Footnote 2. Therefore, the State Legislature acted quickly and a bill was introduced to address this situation on 8 February 2007, which culminated in the passing of N.C. Gen. Stat. § 7A-410. This is not the situation presented in this case, where Tillett's conduct occurred while he was acting in his capacity as a superior court judge.<sup>5</sup>

With this historical backdrop, both N.C. Gen. Stat. § 7A-374.1 and N.C. Gen. Stat. § 7A-410 can and should be read harmoniously, as is required. *See In re Hardy*, 294 N.C. 90, 96, 240 S.E.2d 367, 372 (1978) (Chapter 7A must be construed in *pari materia*). The statute that governs Judge Tillett's situation, where the alleged misconduct occurred while he was acting as a judge, is N.C. Gen. Stat. § 7A-374.1. That statute provides that "[t]he procedure for discipline of any judge or justice of the General Court of Justice *shall* be in accordance with this Article."

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<sup>4</sup> It appears the Supreme Court and/or JSC could have removed Ethridge from the bench for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (*See* Constitution, Art. 4, Section 17(2)).

<sup>5</sup> The State Bar contends that Judge Tillett's conduct, in essence, was not conduct of a judge because it was not appropriate for Judge Tillett to engage in the conduct found by the JSC. If this Court and the JSC were only permitted to review "appropriate" conduct of a judge, neither the JSC nor this Court would have any role, as no discipline would ever be needed. Instead, both this Court and the JSC may and do review situations in which judges are alleged to have used the trappings of judicial office in a manner that is inappropriate.



N.C. Gen. Stat. § 7A-374.1 (emphasis supplied). There is no ambiguity in this mandatory language.

Conversely, N.C. Gen. Stat. § 7A-410 contemplates a situation presented in *Ethridge*, where a judge is disbarred for conduct engaged in as a lawyer before assuming office. N.C. Gen. Stat. § 7A-410 and the *Ethridge* case do not give the State Bar express authority to discipline sitting judges for conduct of a judge; such authority is reserved for the Supreme Court and JSC.<sup>6</sup> In addition, N.C. Gen. Stat. § 7A-410 addresses when a “district attorney” is disciplined. A district attorney is unquestionably subject to discipline by the State Bar, as there is no specific Constitutional provision providing for the discipline of a district attorney. A district attorney disciplined by the State Bar would have appellate rights under Chapter 84. Thus, the inclusion of a reference Chapter 84 appellate rights based on the situation in *Ethridge* (discipline for attorney conduct committed before assuming office) as well as the

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<sup>6</sup> Contrast this situation with the State Bar’s express statutory authority to prosecute conduct that is also the subject of a criminal proceeding. *See* N.C. Gen. Stat. § 84-28(d) (“Any attorney admitted to practice law in this State, who is convicted of or has tendered and has had accepted, a plea of guilty or no contest to, a criminal offense showing professional unfitness, *may be disciplined based upon the conviction*, without awaiting the outcome of any appeals of the conviction.”) (emphasis supplied). There is no similar provision in the State Bar’s statutes applicable to JSC discipline.

possibility of discipline imposed on a district attorney included in N.C. Gen. Stat. § 7A-410 is logical and consistent with the remainder of the Judicial Standards Act.

The State Bar is incorrect in stating that because N.C. Gen. Stat. § 7A-410 went into effect some five months after N.C. Gen. Stat. § 7A-374.1, N.C. Gen. Stat. § 7A-410 supersedes the mandatory nature of the Supreme Court's and JSC's discipline of judges provided for in N.C. Gen. Stat. § 7A-374.1. It is well settled that "[w]here one of two statutes might apply to the same situation, the statute which deals more directly and specifically with the situation controls over the statute of more general applicability." *Trustees of Rowan Tech. Coll. v. J. Hyatt Hammond Associates, Inc.*, 313 N.C. 230, 238, 328 S.E.2d 274, 279 (1985). This is true "even if the general statute is more recent[.]" *Id.* Here, N.C. Gen. Stat. § 7A-374.1 is plain and clear on its face – a judge or justice of the General Court of Justice "*shall* be [disciplined] in accordance with this Article," for conduct of a judge. N.C. Gen. Stat. § 7A-374.1 (emphasis supplied). Moreover, to adopt the State Bar's interpretation would also put N.C. Gen. Stat. § 7A-410 in conflict with Article IV, Section 17 of the North Carolina Constitution, as well as the Judicial Standards Act.

Indeed, appellate review of DHC disciplinary rulings against judges would not afford this Court original jurisdiction as required by the Judicial Standards Act. *See In re Peoples*, 296 N.C. 109, 250 S.E. 2d 890 (1978).

To the extent the State Bar's argument as to the timing of the passing of the statutes carries relevance, as this Court is aware, the Judicial Standards Act was amended in 2013. (*See* Session Law 2013-404, App. 13). These amendments were the General Assembly's last legislative word on the subject matter, and N.C. Gen. Stat. § 7A-374.1 as well as its mandatory "shall" language were left intact and unaltered. If the Legislature intended for the State Bar to discipline a sitting judge for conduct of a judge, it could have amended N.C. Gen. Stat. § 7A-374.1 as it was amending other provisions of the Judicial Standards Act to provide the State Bar a role in disciplining judges. This it did not do.

Finally, the State Bar contends that if a consequence of its action in disciplining Judge Tillett is that he is removed from the bench, that is simply "outside the purview of the DHC." (State Bar Br. p. 17). This suggestion that the consequences are irrelevant, ignores this Court's opinion in *Hardy*. In that case, this Court held that "the General

Assembly enacted Article 30 of Chapter 7A of the General Statutes creating the Judicial Standards Commission, *prescribing the grounds for censure or removal and fixing the procedures to be followed.*” *Hardy*, 294 N.C. at 96, 240 S.E.2d at 372 (emphasis supplied). Further, “[b]y such enactment it was *the intent of the General Assembly to provide the machinery and prescribe the procedure for the censure and removal of justices and judges* for willful misconduct in office, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” *Id.* (emphasis supplied). This explicit holding should leave little dispute that the sole and exclusive means to cause the removal of a judge for conduct of a judge is by the procedure set forth in the Judicial Standards Act.

In sum, this Court should give effect to the mandatory language contained in N.C. Gen. Stat. § 7A-374.1 and *Hardy* hold that “a judge or justice of the General Court of Justice *shall* be [disciplined] in accordance with” the provision of the Judicial Standards Act. N.C. Gen. Stat. § 7A-410 does nothing to change this mandatory language. To hold otherwise, and allow the State Bar to discipline and/or cause the removal of judges would not only frustrate the purpose of Article 17, Section IV of

the North Carolina Constitution, but would essentially thwart this Court's original jurisdiction to conclusively resolve matters involving judicial misconduct. See *In re Martin*, 295 N.C. 291, 299, 245 S.E.2d 766, 771 (1978) (Supreme Court has original jurisdiction to address censure and removal of judges).

Finally, despite the State Bar's implication that unless it is allowed to disbar a sitting judge for conduct of a judge, the judge will be immune from disbarment in instances of egregious conduct. There is no question, however, that the Supreme Court, and courts generally, have the power and authority to discipline and disbar an attorney. *In re Burton*, 257 N.C. 534, 543, 126 S.E.2d 581, 588 (1962) ("A court may enforce honorable conduct on the part of its attorneys and compel them to act honestly toward their clients by means of fine, imprisonment or disbarment").

## **CONCLUSION**

For the reasons stated above and in Judge Tillett's New Brief filed on 14 July 2016, Defendant respectfully requests this Court dismiss this proceeding with prejudice in that: (1) the DHC lacks subject matter jurisdiction to discipline Judge Tillett for conduct of a judge when the JSC has already finally adjudicated the identical facts and issues

involved in the proceeding; (2) the State Bar is estopped by the JSC Order of Public Reprimand; and (3) the continued prosecution of Judge Tillett by the State Bar under the circumstances of this case violates Judge Tillett's due process rights.

Respectfully submitted, this the 26<sup>th</sup> day of August 2016.

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I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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### CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the foregoing **DEFENDANT'S NEW REPLY BRIEF** upon the parties, by depositing the same in the United States mail, addressed as follows:

Katherine Jean  
David R. Johnson  
G. Patrick Murphy  
Jennifer A. Porter  
The North Carolina State Bar  
PO Box 25908  
Raleigh, NC 27611  
*Attorneys for Plaintiff*

This the 26<sup>th</sup> day of August 2016.

/s/ Norman W. Shearin  
Norman W. Shearin  
*Counsel for Defendant*

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STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
15 DHC 7

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

JERRY R. TILLET,

Defendant.

**AFFIDAVIT OF J. CHRISTOPHER  
HEAGARTY**

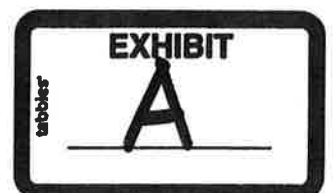
J. Christopher Heagarty, being first duly sworn, deposes and says:

1. I have personal knowledge of the matters described herein or am otherwise competent to testify as to the same.

2. I am the former Commission Counsel and Executive Director of the North Carolina Judicial Standards Commission ("JSC").

3. While serving as Commission Counsel in 2013, I worked with the JSC in review of allegations of judicial misconduct by Judge Jerry R. Tillett ("Judge Tillett"). As part of this review, I had extensive knowledge of the contents of the JSC's investigative file in this matter, including the investigative report, correspondence from witnesses and from attorneys representing Judge Tillett, court documents pertaining to the matters under investigation, copies of media accounts of the incidents under investigation as well and my own legal work product prepared to assist the JSC in review of this matter.

4. At some time during the spring of 2013, after the Public Reprimand was entered by the JSC that addressed Judge Tillett on March 8, 2013, I was asked by Paul Ross, the



executive director of the JSC at that time, to make a copy of information in the JSC's file on Judge Tillett, and was told that someone from State Bar was going to pick it up.

5. I copied information from the Tillett investigative file, mostly taken from the JSC investigative report.

6. I took the information I had compiled and gave it to the secretary of the JSC with the understanding that it was to be picked up by a representative of the State Bar.

7. At some point in the fall or winter of 2014, after Paul Ross resigned and I became the executive director of the JSC, Patrick Murphy, an attorney with the State Bar, and another attorney represented of State Bar came to see me in the JSC office to discuss Judge Tillett.

8. Murphy had in his possession a white loose-leaf notebook. Inside the notebook was a typed time-line of the case I had never seen before. Behind the time line was a copy of the JSC investigative report on Judge Tillett. The notebook contained information beyond the investigative report, including my original hand written attorney notes, a confidential legal analysis of the disciplinary case against Judge Tillett that I had prepared for the Commission members, and other correspondence from the investigative file. I was stunned to see that Mr. Murphy's notebook included original documents, not copies, from the JSC, including my original handwritten attorney notes. Those notes and my confidential legal analysis prepared for the Commission were protected by the attorney-client privilege and were not included in the information I had copied for the State Bar.

9. I asked Mr. Murphy where he had obtained this information. He stated to me that he did not know how the State Bar came to be in possession of the notebook with my

original attorney notes, and asked me if I knew how the State Bar came into possession of this notebook. I told him that I did not know.

10. The notebook Mr. Murphy brought to my office that day was not a copy of the information I prepared for the State Bar, and I would not have copied my handwritten attorney notes or my confidential legal analysis because I considered them privileged attorney-client documents and/or protected attorney work-product.

11. The notebook Mr. Murphy brought to my office also had a detailed time-line of the case that I had neither prepared nor seen before being shown the notebook by Mr. Murphy. I distinctly remember that the time-line ended with a typed conclusion at the bottom of the page that stated, in summary, something to the effect of “After all of that, all they gave him was a public reprimand!”

12. I am certain that the timeline was not a document I had produced nor one I had seen anywhere within the JSC investigative file. I remember this well because I thought it was very unusual as everything else in the notebook had been part of the JSC’s file on Judge Tillett, but I had never seen this document before. Further, I remember it said “they”, not “we” or “the Commission”, which suggested someone else had prepared it. Finally, I remember the phrase “all they gave him” because it implied that the disciplinary action against Judge Tillett was insufficient, yet it was the feeling of myself and, as best I was aware, of the JSC members, that the Public Reprimand was a satisfactory resolution of the case against Judge Tillett.

13. Mr. Murphy kept the notebook and did not return it to me after the meeting. I did not request its return, though I was puzzled about its origin and I considered asking for the return of my personal notes. I reported the meeting to the JSC Chairwoman, Judge Wanda Bryant, and described the notebook and its contents to her.

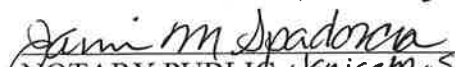
14. During my time at the JSC, Judge Tillett did not waive his right of confidentiality regarding the investigative file in this matter that he retained under the North Carolina General Statutes and Rules of the Judicial Standards Commission.

Further, the Affidavit sayeth not.

This the 20<sup>th</sup> day of May, 2016.

  
J. CHRISTOPHER HEAGARTY

SWORN TO subscribed before me  
this 20<sup>th</sup> day of May, 2016.

  
NOTARY PUBLIC Janice M. Spadorcia  
My commission expires: 5/13/17

[Official Seal]



adjudication of "willful misconduct in office" by the Supreme Court in a proceeding instituted by the Judicial Standards Commission, in which the judge or justice involved has been accorded due process of law and his guilt established by "clear and convincing evidence," is equivalent to an adjudication of guilt of "malpractice in any office" as used in N.C. Const., Art. VI, § 8. Therefore, the legislature acted within its power when it made disqualification from judicial office a consequence of removal for willful misconduct under this section. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

**When Judge May Be Disqualified from Future Office.** — When a judge is removed for "mental or physical incapacity" upon the recommendation of the Judicial Standards Commission, the remedy allowed by statute is limited to removal from office. On the other hand, when a judge is removed for reasons other than incapacity, this section (like N.C. Const., Art. IV, § 17, which it was intended to supplement), provides for both removal and disqualification from future judicial office. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

#### VII. LOSS OF RETIREMENT BENEFITS.

**Loss of Retirement Benefits Is Additional Sanction.** — In addition to the sanctions which follow removal by impeachment (loss of office and disqualification to hold further judicial office), this section imposes an additional sanction, the loss of retirement benefits. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

**The constitutional source for the remedy of loss of retirement benefits** does not lie in the impeachment provisions of N.C. Const., Art. IV, § 4, but in N.C. Const., Art. IV, § 8, which gives the General Assembly the power to "provide by general law for the retirement of Justices and Judges." Under this power the General Assembly may condition retirement benefits upon good conduct in office. Thus, the General Assembly acted well within its constitutional authority when it provided in this section that a judge who is removed from office for cause other than mental or physical incapacity shall receive no retirement compensation. In re Peoples, 296 N.C. 109, 250 S.E.2d

890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

**Right to Recover Contributions to Retirement Fund.** — Loss of retirement benefits as the result of the removal of a judge from office for cause other than mental or physical incapacity does not mean that the judge forfeits his right to recover the contributions which he paid into the fund. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

#### VIII. FUNCTION OF COMMISSION.

**The Commission can neither censure nor remove a judge.** It functions as an arm of the court to conduct hearings for the purpose of aiding the Supreme Court in determining whether a judge is unfit or unsuitable. In re Hardy, 294 N.C. 90, 240 S.E.2d 367 (1978).

The Commission can neither censure nor remove a judge. It is an administrative agency created as an arm of the court to conduct hearings for the purpose of aiding the Supreme Court in determining whether a judge is unfit or unsuitable. To that end, it is authorized to investigate complaints, hear evidence, find facts, and make a recommendation thereon. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

**Focus of Inquiry for Commission.** — Whether the conduct of a judge can fairly be characterized as "private" or "public" is not the inquiry that the Judicial Standards Commission needs to make; rather, the proper focus is on, among other things, the nature and type of conduct, the frequency of occurrences, the impact which knowledge of the conduct would likely have on the prevailing attitudes of the community, and whether the judge acted knowingly or with a reckless disregard for the high standards of the judicial office. In re Martin, 302 N.C. 299, 275 S.E.2d 412 (1981).

**The recommendations of the Commission are not binding upon the Supreme Court,** which will consider the evidence on both sides and exercise its independent judgment as to whether it should censure, remove or decline to do either. In re Hardy, 294 N.C. 90, 240 S.E.2d 367 (1978); In re Martin, 295 N.C. 291, 245 S.E.2d 766 (1978); In re Kivett, 309 N.C. 635, 309 S.E.2d 442 (1983).

**Each case arising from the Commission is to be decided upon its own facts.** In re Kivett, 309 N.C. 635, 309 S.E.2d 442 (1983).

#### § 7A-377. Procedures.

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the

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ied, 442 U.S. 929, 99 S. Ct. 97 (1979).

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ART. 30. JUDICIAL STANDARDS COMMISSION

§7A-377

General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any investigation that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.

(a5) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, are not confidential. Disciplinary hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to censure, suspend, or remove any judge. A respondent who is recommended for censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. The respondent is also entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the

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## CH. 7A. JUDICIAL DEPARTMENT

§7A-377

Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission.

**History.**

1971, c. 590, s. 1; 1973, c. 808; 1989 (Reg. Sess., 1990), c. 995, s. 2; 1997-72, s. 2; 2006-187, s. 11.

**Legal Periodicals.**

For note on the Judicial Standards Commission, see 54 N.C.L. Rev. 1074 (1976).

For survey of 1977 law on professional responsibility and the administration of justice,

see 56 N.C.L. Rev. 871 (1978).

For note discussing the power of the North Carolina Supreme Court to remove state judges in the context of *In re Hardy*, 294 N.C. 90, 240 S.E.2d 367 (1978), see 14 Wake Forest L. Rev. 1187 (1978).

For article, "The Discipline and Removal of Judges in North Carolina," see 4 Campbell L. Rev. 1 (1981).

## CASE NOTES

Commission's procedures are required to meet constitutional due process standards, since a judge's interest in continuing in public office is an individual interest of sufficient importance to warrant constitutional protection against deprivation. *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977).

Because of the severe impact which adverse findings by the Judicial Standards Commission and censure or removal by the Supreme Court may reasonably be expected to have upon the individual, fundamental fairness entitles the judge to a hearing which meets the basic requirements of due process. *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977).

**Due Process Not Violated by Commission's Functions.** — The combination of investigative and judicial functions in the Judicial Standards Commission does not violate a respondent's due process rights under either the federal or North Carolina Constitutions, since it is an administrative agency created as an arm of the court, and any alleged partiality of the Commission is cured by the final scrutiny of the Supreme Court. *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977).

**Section 7A-376 in Pari Materia.** — The provisions of this section and G.S. 7A-376 are parts of the same enactment, relate to the same class of persons, and are aimed at suppression of the same evil. The statutes are therefore in *pari materia* and must be construed accordingly. *In re Hardy*, 294 N.C. 90, 240 S.E.2d 367 (1978).

A proceeding begun before the Judicial Standards Commission is neither a civil

nor a criminal action. Such a proceeding is merely an inquiry into the conduct of one exercising judicial power to determine whether he is unfit to hold a judgeship. Its aim is not to punish the individual but to maintain the honor and dignity of the judiciary and the proper administration of justice. *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977).

**The function of the Commission** is to conduct hearings upon complaints filed against judges and justices, to find facts and make recommendations so as to bring before the Supreme Court the questions of whether a judge or justice should be censured or removed in order to maintain proper administration of justice, public confidence in the judicial system and the honor and integrity of judges. *In re Martin*, 295 N.C. 291, 245 S.E.2d 766 (1978).

**Powers of Commission.** — The Judicial Standards Commission is empowered by this section to investigate complaints, compel the attendance of witnesses and the production of evidence, conduct hearings which afford due process of law, and make recommendations to the Supreme Court about what disciplinary action, if any, should be taken. *In re Renfer*, 345 N.C. 632, 482 S.E.2d 540 (1997).

**Article Does Not Vest Absolute Discretion in Commission.** — There is no merit in the contention that this Article illegally vests unguided and absolute discretion in the Judicial Standards Commission to choose which complaints to investigate and what evidence it will accept. *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977).

The quantum of proof required in proceedings before the Commission of this

# RULES OF THE JUDICIAL STANDARDS COMMISSION

Adopted Effective January 1, 2007

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### Rule

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### Rule 1. Authority

These rules are promulgated pursuant to the authority contained in N.C. Gen. Stat. § 7A-380(a), and are effective January 1, 2007.

### Rule 2. Organization

(a) The Commission shall have a Chairperson, who is the Court of Appeals member and two Vice-Chairpersons, each of whom shall be a superior court judge. The Vice-Chairperson with the longest tenure of service on the Commission shall preside in the absence of the Chairperson. The Executive Director shall serve as the secretary to the full Commission and to each panel, and shall perform such duties as the full Commission or a panel may assign.

(b) The Chairperson shall divide the Commission into a two six (6) member panels, one to be designated Panel A and the other Panel B. Each panel shall include one (1) superior court judge, one (1) district court judge, two (2) members appointed by the North Carolina State Bar, one (1) citizen appointed by the Governor, and one (1) citizen appointed by the General Assembly. Membership on the panels may rotate in a manner determined by the Chairperson of the Commission, provided that no member, other than the Chairperson, shall sit on both the hearing and investigative panel for the same proceeding. The Chairperson of the Commission shall preside over all panel

meetings. The two Vice-Chairpersons shall be assigned to different panels and each shall preside over their respective panel meetings in the absence of the Chairperson. No member, other than the Commission Chairperson who shall preside over all disciplinary hearings, who has served on an investigative panel for a particular inquiry shall serve upon the hearing panel for the same matter.

(c) The full Commission shall meet on the call of the Chairperson or upon the written request of any five (5) members. Each panel of the Commission shall meet every other month, alternating such meetings with the other panel, or upon the call of the Chairperson. Hearing panels shall also meet as needed to conduct disciplinary hearings upon the call of the Chairperson. Each member of the Commission, including the Chairperson, Vice-Chairpersons, or other presiding member shall be a voting member.

(d) A quorum for the conduct of business of the full Commission shall consist of any nine (9) members. A quorum for the conduct of the business of a panel shall consist of five (5) members. The affirmative vote of five (5) members of a panel is required to issue a public reprimand pursuant to Rule 11. A quorum for the conduct of any disciplinary proceeding instituted pursuant to Rule 12 shall consist of five (5) members of the panel assigned to hear the proceeding. The affirmative vote of five (5) members of a hearing panel is required to make a recommendation to the



Supreme Court that a judge be censured, suspended, or removed from office.

(e) The Commission shall ordinarily meet in Raleigh, but may meet anywhere in the State. The Commission's address is P.O.Box 1122, Raleigh, N.C. 27602.

### **Rule 3. Executive Director**

The Executive Director shall have duties and responsibilities prescribed by the Commission including but not limited to:

- (1) Receive and screen complaints and allegations as to misconduct or disability, and make preliminary evaluations with respect thereto;
- (2) Maintain the Commission's records;
- (3) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
- (4) Prepare the Commission's budget for approval by the Commission and administer its funds;
- (5) Employ and supervise other members of the Commission's staff;
- (6) Prepare an annual report of the Commission's activities for presentation to the Commission, to the Supreme Court and to the public;
- (7) Employ, with the approval of the Chairperson, a special counsel, and an investigator as necessary to investigate and process matters before the Commission and before the Supreme Court.

### **Rule 4. Counsel**

Commission counsel shall have duties and responsibilities prescribed by the Commission including but not limited to:

- (1) Advise the Commission during its investigations and to draft decisions, orders, reports and other documents;
- (2) Supervise investigations involving alleged misconduct or disability
- (3) Direct letters of notice to respondents when directed to do so by the Commission;
- (4) Prosecute disciplinary proceedings before the Commission;
- (5) Appear on behalf of the Commission in the Supreme Court in connection with any recommendation made by the Commission;
- (6) Perform other duties at the direction of the Executive Director or Commission Chairperson.

### **Rule 5. Investigator**

The Investigator shall have duties and responsibilities prescribed by the Commission including, but not limited to:

- (1) Conduct preliminary investigations,
- (2) Conduct formal investigations, upon authorization of the Commission,
- (3) Assist Counsel in the preparation and coordination of disciplinary proceedings initiated pursuant to Rule 12,
- (4) Maintain records of the investigations and subsequent proceedings as set forth above.
- (5) Perform other duties at the direction of the Executive Director or Commission Chairperson.

### **Rule 6. Confidentiality**

(a) During investigative and initial proceedings.

(1) Except as otherwise provided herein, or unless waived by the judge, at all times prior to the issuance of a public reprimand or the institution of a disciplinary proceeding alleging misconduct by or incapacity of a judge, all Commission proceedings including Commission deliberations, investigative files, records, papers and matters submitted to the Commission, shall be held confidential by the Commission, its Executive Director, Counsel, Investigator and staff except as follows:

(A) With the approval of the Commission, the investigative officer may notify respondent that a complaint has been received and may disclose to respondent the name of the person making the complaint.

(B) The Commission may inform a complainant or potential witness of the date when respondent is first notified that a complaint alleging misconduct or incapacity has been filed with the Commission.

(C) The Commission may disclose information upon written waiver by the subject judge when:

(i) Public statements that charges are pending before the Commission are substantially unfair to respondent; or

(ii) Respondent is publicly accused or alleged to have engaged in misconduct or with having a disability, and the Commission, after a formal investigation, has determined that no basis exists to warrant further proceedings or a recommendation of discipline or retirement.

(D) When the Commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(E) In any case in which a complaint filed with the Commission is made public by the complainant, the judge involved, independent sources, or by rule

of law, the Commission may issue such statements of clarification and correction as it deems appropriate in the interest of maintaining confidence in the justice system. Such statements may address the status and procedural aspects of the proceeding, the judge's right to a fair hearing in accordance with due process requirements, and any official action of disposition by the Commission, including release of its written notice to the complainant or the judge of such action or disposition.

(2) The fact that a complaint has been made, or that a statement has been given to the Commission, shall be confidential during the investigation and initial proceeding except as provided in this Rule.

(3) No person providing information to the Commission shall disclose information they have obtained from the Commission concerning the investigation, including the fact that an investigation is being conducted, until the Commission issues a public reprimand, files a complaint and disciplinary proceeding, or dismisses the complaint.

**(b) After Public Reprimand or Initiation of Disciplinary proceedings.**

(1) Upon the issuance by the Commission of a public reprimand or the initiation of a complaint and disciplinary proceeding by the Commission, all subsequent proceedings shall be public, except as may be provided by protective order.

(2) The Commission complaint alleging misconduct or incapacity shall be available for public inspection after it has been served upon the respondent judge. Investigative files and records shall not be disclosed unless they formed the basis for probable cause. Those records of the initial proceeding that were the basis of a finding of probable cause shall become public as of the date of the Commission's hearing.

(3) The work product of the Commission members, its Executive Director, Commission Counsel and investigator shall be confidential and shall not be disclosed.

**(c) Commission Deliberations.** All deliberations of the Commission in reaching a decision on the statement of charges shall be confidential and shall not be disclosed.

**(d) General Applicability.**

(1) No person shall disclose information obtained from Commission proceedings or papers filed only with the Commission, except information obtained from documents disclosed to the public by the Commission pursuant to this Rule. All information disclosed publicly at disciplinary hearings conducted by the Commission is not deemed confidential.

(2) Any person violating the confidentiality requirements of this Rule 6 may be subject to punishment for contempt.

(3) A judge shall not intimidate, coerce, or otherwise attempt to induce any person to disclose, conceal

or alter records, papers, or information made confidential by the Rule. A violation of this subsection may be charged as a separate violation of the Code of Judicial Conduct.

(4) All written communications from the Commission or its employees to a judge or his or her counsel which are deemed confidential pursuant to these rules shall be enclosed in a securely sealed inner envelope which is clearly marked "Confidential."

## Rule 7. Disqualification

A judge who is a member of the Commission is disqualified from acting in any case in which he or she is a respondent, except in his or her own defense.

## Rule 8. Advisory Opinions

(a) A judge may seek an informal advisory opinion as to whether conduct, actual or contemplated, conforms to the requirements of the Code of Judicial Conduct. Such informal advisory opinion may be requested verbally or in writing. The chairperson, executive secretary, or counsel may grant or deny a request for an informal advisory opinion. Information contained in a request for an informal advisory opinion shall be confidential, however, when a request for an informal advisory opinion discloses actual conduct which may be actionable as a violation of the Code of Judicial Conduct, the Chairperson, Executive Director, or Counsel shall refer the matter to an investigative panel of the Commission for consideration. The Chairperson, Executive Director, or Counsel may issue an informal advisory opinion to guide the inquiring judge's own prospective conduct if the inquiry is routine, the responsive advice is readily available from the Code of Judicial Conduct and formal Commission opinions, or the inquiry requires immediate response to protect the inquiring judge's right or interest. An informal advisory opinion may be issued verbally, but shall be confirmed in writing and shall approve or disapprove only the matter in issue and shall not otherwise serve as precedent and shall not be published. An inquiry requesting an opinion concerning past conduct or that presents a matter of first impression shall be referred to the Commission for formal opinion. Such informal advisory opinions shall be reviewed periodically by the Commission and, if upon such review, a majority of the Commission present and voting decided that such informal advisory opinion should be withdrawn or modified, the inquiring judge shall be notified in writing by the executive secretary. Until such notification, the judge shall be deemed to have acted in good faith if he or she acts in conformity with the informal advisory opinion which is later withdrawn or modified. If an inquiring judge disagrees with the informal advisory opinion issued by the Chairperson, Executive Director, or Counsel, such judge may submit a written request, in accordance



## Disbarred N.C. judge still drawing six-figure salary

**Wednesday** Posted Jan 10, 2007 at 12:01 AM

Raleigh | A former district court judge is still drawing his six-digit salary from the state payroll, even though he no longer has a law license and can't hear cases.

James Ethridge didn't resign after the State Bar revoked his law license in October. Unless an oversight panel or the state legislature takes action, the state may be paying Ethridge's annual salary of \$101,376 until his term ends in December 2008.

Meanwhile, records show that taxpayers have paid \$9,300 - not to mention mileage and meal reimbursements - to hire substitute judges to cover Ethridge's seat, which deals with a busy caseload of criminal, domestic and child custody disputes in Johnston, Harnett and Lee counties in central North Carolina.

"We don't have a road map of how to proceed in a situation like this," said Paul Ross, executive secretary for the state's Judicial Standards Commission, the disciplinary board for judges. "No one anticipated something like this. You just don't think judges are going to get disbarred."

The State Bar revoked Ethridge's license last year after determining he was dishonest and deceitful when he took the home and \$14,000 life savings of an elderly, senile woman while he was a lawyer in 2001. Ethridge was elected as a judge in 2004, after practicing law for 28 years.

Tom Lock, the former district attorney in Johnston County where Ethridge practiced, told *The News & Observer* of Raleigh on Tuesday that he asked the State Bureau of Investigation to review the case.

**App. 12**

**App. 13**  
**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2013**

**SESSION LAW 2013-404**  
**HOUSE BILL 652**

AN ACT TO MODIFY THE LAW REGARDING DISCIPLINE FOR JUDGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-374.2 reads as rewritten:

**"§ 7A-374.2. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

- (1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.
- (2) "Commission" means the North Carolina Judicial Standards Commission.
- (3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.
- (4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.
- (5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.
- (6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.
- (7) "Public reprimand" means ~~a written action of the Commission issued upon a finding~~ finding by the Supreme Court, based upon a written recommendation by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is ~~minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court.~~ minor. A public reprimand may require that the judge follow a corrective course of action.
- (8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.
- (9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court."

**SECTION 2.** G.S. 7A-376 reads as rewritten:

**"§ 7A-376. Grounds for discipline by Commission; public reprimand, censure, suspension, or removal by the Supreme Court.**



## App. 14

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of public reprimand, censure, suspension, or removal, may issue to the judge a private letter of ~~caution or may issue to the judge a public reprimand, caution.~~

(b) Upon recommendation of the Commission, the Supreme Court may issue a public reprimand, censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge."

### SECTION 3. G.S. 7A-377 reads as rewritten:

#### "§ 7A-377. Procedures.

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for public reprimand, censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any investigation that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

~~(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.~~

(a5) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, are not remain confidential. Disciplinary hearings ordered by the Commission are ~~not~~ confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are ~~not~~ confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to issue a public reprimand, censure, suspend, or remove any judge. A

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respondent who is recommended for public reprimand, censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. The respondent is also entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of public reprimand, censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(a6) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme Court, the notice and statement of charges filed by the Commission along with the answer and all other pleadings, and recommendations of the Commission to the Supreme Court along with the record filed in support of such recommendations, are no longer confidential.

(b) Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission."

**SECTION 4.** G.S. 7A-378 is repealed.

**SECTION 5.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26<sup>th</sup> day of July, 2013.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 10:49 a.m. this 23<sup>rd</sup> day of August, 2013