

GOVERNMENT CODE

TITLE 2. JUDICIAL BRANCH

SUBTITLE B. JUDGES

CHAPTER 33. STATE COMMISSION ON JUDICIAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. DEFINITIONS. (a) In this chapter:

(1) "Censure" means an order of denunciation issued by the commission under Section 1-a(8), Article V, Texas Constitution, or an order issued by a review tribunal under Section 1-a(9), Article V, Texas Constitution.

(2) "Chairperson" means the member of the commission selected by the members of the commission to serve as its presiding officer.

(3) "Clerk" means the individual designated by the commission to assist in:

(A) formal proceedings before the commission or a special master; or

(B) proceedings before a special court of review.

(4) "Commission" means the State Commission on Judicial Conduct.

(5) "Examiner" means an individual, including an employee or special counsel of the commission, appointed by the commission to gather and present evidence before a special master, the commission, a special court of review, or a review tribunal.

(6) "Formal hearing" means the public evidentiary phase of formal proceedings conducted before the commission or a special master.

(7) "Formal proceedings" means the proceedings ordered by the commission concerning the public censure, removal, or retirement of a judge.

(8) "Judge" means a justice, judge, master, magistrate, or retired or former judge as described by Section 1-a, Article V, Texas Constitution, or other person who performs the functions of the justice, judge, master, magistrate, or retired or former judge.

(9) "Review tribunal" means a panel of seven justices of the courts of appeal selected by lot by the chief justice of the supreme court to review a recommendation of the commission for the removal or retirement of a judge under Section 1-a(9), Article V, Texas Constitution.

(10) "Sanction" means an order issued by the commission under Section 1-a(8), Article V, Texas Constitution, providing for a private or public admonition, warning, or reprimand or requiring that a person obtain additional training or education.

(11) "Special court of review" means a panel of three justices of the courts of appeal selected by lot by the chief justice of the supreme court on petition to review a sanction issued by the commission.

(12) "Special master" means a master appointed by the supreme court under Section 1-a, Article V, Texas Constitution.

(b) For purposes of Section 1-a, Article V, Texas Constitution, "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" includes:

(1) wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business;

(2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct;

(3) persistent or wilful violation of the rules promulgated by the supreme court;

(4) incompetence in the performance of the duties of the office;

(5) failure to cooperate with the commission; or

(6) violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission.

(c) The definitions provided by Subsections (b) and (d) are not exclusive.

(d) For purposes of Subdivision (6), Section 1-a, Article V, Texas Constitution, a misdemeanor involving official misconduct includes a misdemeanor involving an act relating to a judicial

office or a misdemeanor involving an act involving moral turpitude. Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 1, eff. Sept. 1, 2001.

Sec. 33.002. COMMISSION. (a) The State Commission on Judicial Conduct is established under Section 1-a, Article V, Texas Constitution, and has the powers provided by that section.

(b) A constitutional or statutory reference to the State Judicial Qualifications Commission means the State Commission on Judicial Conduct.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 2, eff. Sept. 1, 2001.

Sec. 33.003. SUNSET PROVISION. The State Commission on Judicial Conduct is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed during the period in which state agencies abolished in 2001 and every 12th year after 2001 are reviewed.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1985, 69th Leg., ch. 480, Sec. 21, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 148, Sec. 2.47(a), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 5.13, eff. Nov. 12, 1991.

Sec. 33.0032. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity,"

as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association the members of which are subject to regulation by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association the members of which are subject to regulation by the commission.

(c) A person may not act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission. Added by Acts 2001, 77th Leg., ch. 917, Sec. 3, eff. Sept. 1, 2001.

Sec. 33.004. COMPENSATION AND EXPENSES OF COMMISSION MEMBERS AND SPECIAL MASTERS. (a) A member of the commission serves without compensation for services, but is entitled to reimbursement for expenses as provided by this section.

(b) A special master who is an active district judge or justice of the court of appeals is entitled to a per diem of \$25 for each day or part of a day that the person spends in the performance of the duties of special master. The per diem is in addition to other compensation and expenses authorized by law.

(c) A special master who is a retired judge of a district court or the court of criminal appeals or a retired justice of a court of appeals or the supreme court is entitled to compensation in the same manner as provided by Section 74.061. For purposes of this subsection, the term "court" in Section 74.061(c) means the district court in the county in which formal proceedings are heard by the special master.

(d) A member or employee of the commission or a special master is entitled to necessary expenses for travel, board, and lodging incurred in the performance of official duties.

(e) Payment shall be made under this section on certificates of approval by the commission.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 917, Sec. 4, eff. Sept. 1, 2001.

Sec. 33.0041. REMOVAL OF COMMISSION MEMBER; NOTIFICATION PROCEDURES. If the executive director has knowledge that a potential ground for removal of a commission member exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 5, eff. Sept. 1, 2001.

Sec. 33.0042. REQUIREMENTS FOR OFFICE OR EMPLOYMENT: INFORMATION. The executive director or the executive director's designee shall provide to members of the commission and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter and Section 1-a, Article V, Texas Constitution, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 5, eff. Sept. 1, 2001.

Sec. 33.0043. COMMISSION MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission shall complete a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the commission;
- (2) the programs operated by the commission;
- (3) the role and functions of the commission;
- (4) the rules of the commission with an emphasis on the

rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 5, eff. Sept. 1, 2001.

Sec. 33.0044. DIVISION OF RESPONSIBILITY. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the commission.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 5, eff. Sept. 1, 2001.

Sec. 33.0045. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve

compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 5, eff. Sept. 1, 2001.

Sec. 33.0046. STATE EMPLOYEE INCENTIVE PROGRAM: INFORMATION AND TRAINING. The executive director or the executive director's designee shall provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 5, eff. Sept. 1, 2001.

Sec. 33.005. ANNUAL REPORT. (a) Not later than December 1 of each year, the commission shall submit to the legislature a report for the preceding fiscal year ending August 31.

(b) The report must include:

(1) an explanation of the role of the commission;

(2) annual statistical information and examples of improper judicial conduct;

(3) an explanation of the commission's processes; and

(4) changes the commission considers necessary in its rules or the applicable statutes or constitutional provisions.

(c) The commission shall distribute the report to the governor, lieutenant governor, speaker of the house of representatives, and editor of the Texas Bar Journal.

(d) The legislature shall appropriate funds for the preparation and distribution of the report.

(e) The Texas Bar Journal shall periodically publish public statements, sanctions, and orders of additional education issued by the commission.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 646, Sec. 3, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 462, Sec. 3, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 6, eff. Sept. 1, 2001.

Sec. 33.006. IMMUNITY FROM LIABILITY. (a) This section applies to:

- (1) the commission;
- (2) a member of the commission;
- (3) the executive director of the commission;
- (4) an employee of the commission;
- (5) a special master appointed under Section 1-a(8), Article V, Texas Constitution;
- (6) special counsel for the commission and any person employed by the special counsel; and
- (7) any other person appointed by the commission to assist the commission in performing its duties.

(b) A person to which this section applies is not liable for an act or omission committed by the person within the scope of the person's official duties.

(c) The immunity from liability provided by this section is absolute and unqualified and extends to any action at law or in equity.

Added by Acts 1999, 76th Leg., ch. 462, Sec. 4, eff. June 18, 1999.
Amended by Acts 2001, 77th Leg., ch. 917, Sec. 7, eff. Sept. 1, 2001.

Sec. 33.007. DISTRIBUTION OF MATERIALS TO JUDGES AND THE PUBLIC. (a) The commission shall develop and distribute plain-language materials as described by this section to judges and the public.

- (b) The materials must include a description of:
- (1) the commission's responsibilities;
 - (2) the types of conduct that constitute judicial misconduct;
 - (3) the types of sanctions issued by the commission, including orders of additional education; and
 - (4) the commission's policies and procedures relating to complaint investigation and resolution.

(c) The materials shall be provided in English and Spanish.

(d) The commission shall provide to each person filing a

complaint with the commission the materials described by this section.

(e) The commission shall adopt a policy to effectively distribute materials as required by this section.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 8, eff. Sept. 1, 2001.

Sec. 33.008. JUDICIAL MISCONDUCT INFORMATION. The commission shall routinely provide to entities that provide education to judges information relating to judicial misconduct resulting in sanctions or orders of additional education issued by the commission. The commission shall categorize the information by level of judge and type of misconduct.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 8, eff. Sept. 1, 2001.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 33.021. GENERAL POWERS OF COMMISSION. The commission may:

- (1) design and use a seal;
 - (2) employ persons that it considers necessary to carry out the duties and powers of the commission;
 - (3) employ special counsel as it considers necessary;
 - (4) arrange for attendance of witnesses;
 - (5) arrange for and compensate expert witnesses and reporters; and
 - (6) pay from its available funds the reasonably necessary expenses of carrying out its duties under the constitution, including providing compensation to special masters.
- Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 5, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 10, eff. Sept. 1, 2001.

Sec. 33.0211. COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;

- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 11, eff. Sept. 1, 2001.

Sec. 33.022. INVESTIGATIONS AND FORMAL PROCEEDINGS.

(a) The commission may conduct a preliminary investigation of the circumstances surrounding an allegation or appearance of misconduct or disability of a judge to determine if the allegation or appearance is unfounded or frivolous.

(b) If, after conducting a preliminary investigation under this section, the commission determines that an allegation or appearance of misconduct or disability is unfounded or frivolous, the commission shall terminate the investigation.

(c) If, after conducting a preliminary investigation under this section, the commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, the commission:

(1) shall:

(A) conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability; and

(B) notify the judge in writing of:

(i) the commencement of the investigation;
and

(ii) the nature of the allegation or appearance of misconduct or disability being investigated; and

(2) may:

(A) order the judge to:

(i) submit a written response to the allegation or appearance of misconduct or disability; or

(ii) appear informally before the commission;

(B) order the deposition of any person; or

(C) request the complainant to appear informally before the commission.

(d) The commission shall serve an order issued by the commission under Subsection (c)(2)(B) on the person who is the subject of the deposition and the judge who is the subject of the investigation. The order must be served within a reasonable time before the date of the deposition.

(e) The commission may file an application in a district court to enforce an order issued by the commission under Subsection (c)(2)(B).

(f) The commission shall notify the judge in writing of the disposition of a full investigation conducted by the commission under this section.

(g) If after the investigation has been completed the commission concludes that formal proceedings will be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be served on the judge without delay. The proceedings shall be entitled:

"Before the State Commission on Judicial Conduct
Inquiry Concerning a Judge, No. ____"

(h) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts on which the charges are based and the specific standards contended to have been violated. The judge is entitled to file a written answer to the charges against the judge not later than the 15th day after the notice is served on the judge, and the notice shall so advise the judge.

(i) The notice shall be served on the judge or the judge's attorney of record by personal service of a copy of the notice by a person designated by the chairperson. The person serving the

notice shall promptly notify the clerk in writing of the date on which the notice was served. If it appears to the chairperson on affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing by registered or certified mail copies of the notice addressed to the judge at the judge's chambers or at the judge's last known residence in an envelope marked "personal and confidential." The date of mailing shall be entered in the docket.

(j) A judge at the judge's request may elect to have any hearing open to the public or to persons designated by the judge. The right of a judge to an open hearing does not preclude placing witnesses under the rule as provided by the Texas Rules of Civil Procedure.

(k) A judge is not entitled to a jury trial in formal proceedings before a special master or the commission.

(l) The commission shall adopt procedures for hearing from judges and complainants appearing before the commission. The procedures shall ensure the confidentiality of a complainant's identity as provided under Section 33.0321.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 486, Sec. 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 596, Sec. 1, 2, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 462, Sec. 6, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 12, eff. Sept. 1, 2001.

Sec. 33.023. PHYSICAL OR MENTAL INCAPACITY OF JUDGE.

(a) In any investigation or proceeding that involves the physical or mental incapacity of a judge, the commission may order the judge to submit to a physical or mental examination by one or more qualified physicians or a mental examination by one or more qualified psychologists selected and paid for by the commission.

(b) The commission shall give the judge written notice of the examination not later than 10 days before the date of the examination. The notice must include the physician's name and the date, time, and place of the examination.

(c) Each examining physician shall file a written report of the examination with the commission and the report shall be

received as evidence without further formality. On request of the judge or the judge's attorney, the commission shall give the judge a copy of the report. The physician's oral or deposition testimony concerning the report may be required by the commission or by written demand of the judge.

(d) If a judge refuses to submit to a physical or mental examination ordered by the commission under this section, the commission may petition a district court for an order compelling the judge to submit to the physical or mental examination.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 7, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 13, eff. Sept. 1, 2001.

Sec. 33.024. OATHS AND SUBPOENAS. In conducting an investigation, formal proceedings, or proceedings before a special court of review, a commission member, special master, or member of a special court of review may:

(1) administer oaths;

(2) order and provide for inspection of books and records; and

(3) issue a subpoena for attendance of a witness or production of papers, books, accounts, documents, and testimony relevant to the investigation or proceeding.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 8, eff. June 18, 1999.

Sec. 33.025. ENFORCEMENT OF SUBPOENA. (a) The commission may file an application in a district court or, if appropriate, with a special master or special court of review, to enforce a subpoena issued by the commission under this chapter.

(b) A special master or special court of review may enforce by contempt a subpoena issued by the commission, the special master, or the special court of review.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 9, eff. June 18, 1999.

Sec. 33.026. WITNESS IMMUNITY. (a) In a proceeding or

deposition related to a proceeding before the commission, a special master, or a special court of review, the commission, special master, or special court of review may compel a person other than the judge to testify or produce evidence over the person's claim of privilege against self-incrimination.

(b) A person compelled to testify over a proper claim of privilege against self-incrimination is not subject to indictment or prosecution for a matter or transaction about which the person truthfully testifies or produces evidence.

(c) A special master has the same powers as a district judge in matters of contempt and granting immunity.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 10, eff. June 18, 1999.

Sec. 33.027. DISCOVERY. (a) In formal proceedings or in a proceeding before a special court of review, discovery shall be conducted, to the extent practicable, in the manner provided by the rules applicable to civil cases generally.

(b) On request, a special master, the commission, or a special court of review shall expedite the discovery in formal proceedings or in a proceeding before a special court of review.

(c) The following may not be the subject of a discovery request in formal proceedings or in a proceeding before a special court of review:

(1) the discussions, thought processes, or individual votes of members of the commission;

(2) the discussions or thought processes of employees of the commission, including special counsel for the commission; or

(3) the identity of a complainant or informant if the person requests that the person's identity be kept confidential.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 11, eff. June 18, 1999.

Sec. 33.028. PROCESS AND ORDERS. (a) Process issued under this chapter is valid anywhere in the state.

(b) A peace officer, an employee of the commission, or any

other person whom the commission, a special master, or a special court of review designates may serve process or execute a lawful order of the commission, the special master, or the special court of review.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 12, eff. June 18, 1999.

Sec. 33.029. WITNESSES' EXPENSES. A witness called to testify by the commission other than an officer or employee of the state or a political subdivision or court of the state is entitled to the same mileage expenses and per diem as a witness before a state grand jury. The commission shall pay these amounts from its appropriated funds.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 13, eff. June 18, 1999.

Sec. 33.030. ASSISTANCE TO COMMISSION, SPECIAL MASTER, OR SPECIAL COURT OF REVIEW. (a) On request of the commission, the attorney general shall act as its counsel generally or in a particular investigation or proceeding.

(b) A state or local government body or department, an officer or employee of a state or local government body, or an official or agent of a state court shall cooperate with and give reasonable assistance and information to the commission, an authorized representative of the commission, a special master, or a special court of review concerning an investigation or proceeding before the commission, special master, or special court of review.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 14, eff. June 18, 1999.

Sec. 33.031. NO AWARD OF COSTS. Court costs or attorney's fees may not be awarded in a proceeding under this chapter.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 15, eff. June 18, 1999.

Sec. 33.032. CONFIDENTIALITY OF PAPERS, RECORDS, AND PROCEEDINGS. (a) Except as otherwise provided by this section and

Section 33.034, the papers filed with and proceedings before the commission are confidential prior to the filing of formal charges.

(b) The formal hearing and any evidence introduced during the formal hearing, including papers, records, documents, and pleadings filed with the clerk, shall be public.

(c) On issuance of a public admonition, warning, reprimand, or public requirement that a person obtain additional training or education by the commission, the record of the informal appearance and the documents presented to the commission during the informal appearance that are not protected by attorney-client or work product privilege shall be public.

(d) The disciplinary record of a judge, including any private sanctions, is admissible in a subsequent proceeding before the commission, a special master, a special court of review, or a review tribunal.

(e) On the filing of a written request by a judge, the commission may release to the person designated in the request, including the judge, the number, nature, and disposition of a complaint filed against the judge with the commission, except that the commission may refuse to release the identity of a complainant.

(f) The commission may release to the Office of the Chief Disciplinary Counsel of the State Bar of Texas information indicating that an attorney, including a judge who is acting in the judge's capacity as an attorney, has violated the Texas Disciplinary Rules of Professional Conduct.

(g) If the commission issues an order suspending a judge who has been indicted for a criminal offense, the order, any withdrawal of the order, and all records and proceedings related to the suspension shall be public.

(h) A voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission shall be public on the commission's acceptance of the agreement. The agreement and any agreed statement of facts relating to the agreement are admissible in a subsequent proceeding before the commission. An agreed statement of facts may be released to the public only if the judge violates a term of the agreement.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended

by Acts 1987, 70th Leg., ch. 486, Sec. 2, eff. Aug. 31, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 47, Sec. 1, eff. Oct. 20, 1987; Acts 1999, 76th Leg., ch. 462, Sec. 16, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 14, eff. Sept. 1, 2001.

Sec. 33.0321. CONFIDENTIALITY OF COMPLAINANT'S IDENTITY. On the request of a complainant, the commission may keep the complainant's identity confidential. Added by Acts 2001, 77th Leg., ch. 917, Sec. 15, eff. Sept. 1, 2001.

Sec. 33.033. NOTIFICATION TO COMPLAINANT. (a) The commission shall promptly notify a complainant of the disposition of the case.

(b) The communication shall inform the complainant that:

- (1) the case has been dismissed;
- (2) a private sanction or order of additional education has been issued by the commission;
- (3) a public sanction has been issued by the commission;
- (4) formal proceedings have been instituted; or
- (5) a judge has resigned from judicial office in lieu of disciplinary action by the commission.

(c) The communication may not contain the name of a judge unless a public sanction has been issued by the commission or formal proceedings have been instituted.

(d) If a public sanction has been issued by the commission, the communication must include a copy of the public sanction.

(e) If the complaint is dismissed by the commission, the commission shall include in the notification under Subsection (a):

- (1) an explanation of each reason for the dismissal; and
- (2) information relating to requesting reconsideration of the dismissed complaint as provided by Sections 33.035(a) and (f).

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 486, Sec. 3, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 462, Sec. 17, eff. June 18, 1999; Acts 2001,

Sec. 33.034. REVIEW OF COMMISSION DECISION. (a) A judge who receives from the commission any type of sanction is entitled to a review of the commission's decision as provided by this section. This section does not apply to a decision by the commission to institute formal proceedings.

(b) Not later than the 30th day after the date on which the commission issues its decision, the judge must file with the chief justice of the supreme court a written request for appointment of a special court of review.

(c) Not later than the 10th day after the chief justice receives the written request, the chief justice shall select by lot the court of review. The court of review is composed of three court of appeals justices, other than a justice serving in a court of appeals district in which the judge petitioning for review of the commission's order serves and other than a justice serving on the commission. The chief justice shall notify the petitioner and the commission of the identities of the justices appointed to the court and of the date of their appointment. Service on the court shall be considered a part of the official duties of a justice, and no additional compensation may be paid for the service.

(d) Within 15 days after the appointment of the court of review, the commission shall file with the clerk a charging document that includes a copy of the sanction issued and any additional charges to be considered in the de novo proceeding. The charging document is public on its filing with the clerk. On receipt of the filing of the charging document, the clerk shall send the charging document to the judge who is the subject of the document and to each justice on the court of review.

(e) The review by the court under this section is by trial de novo as that term is used in the appeal of cases from justice to county court. Any hearings of the court shall be public and shall be held at the location determined by the court. Any evidence introduced during a hearing, including papers, records, documents, and pleadings filed with the clerk in the proceedings, is public.

(f) Except as otherwise provided by this section, the

procedure for the review is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of civil actions generally.

(g) A judge is not entitled to a trial by jury in a review under this section.

(h) Within 30 days after the date on which the charging document is filed with the clerk, the court shall conduct a hearing on the charging document. The court may, if good cause is shown, grant one or more continuances not to exceed a total of 60 days. Within 60 days after the hearing, the court shall issue a decision as to the proper disposition of the appeal.

(i) The court's decision under this section is not appealable.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 47, Sec. 2, eff. Oct. 20, 1987. Amended by Acts 1999, 76th Leg., ch. 462, Sec. 18, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 917, Sec. 17, eff. Sept. 1, 2001.

Sec. 33.035. RECONSIDERATION OF COMPLAINT. (a) A complainant may request reconsideration of a dismissed complaint if, not later than the 30th day after the date of the communication informing the complainant of the dismissal, the complainant provides additional evidence of misconduct committed by the judge.

(b) The commission shall deny a request for reconsideration if the complainant does not meet the requirements under Subsection (a). The commission shall notify the complainant of the denial in writing.

(c) The commission shall grant a request for reconsideration if the complainant meets the requirements under Subsection (a). After granting a request, the commission shall vote to:

(1) affirm the original decision to dismiss the complaint; or

(2) reopen the complaint.

(d) The commission shall notify the complainant of the results of the commission's vote under Subsection (c) in writing.

(e) The commission shall conduct an appropriate

investigation of a complaint reopened under Subsection (c)(2). The investigation shall be conducted by commission staff who were not involved in the original investigation.

(f) A complainant may request reconsideration of a dismissed complaint under this section only once.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 18, eff. Sept. 1, 2001.

Sec. 33.036. CERTAIN DISCLOSURE OF INFORMATION. (a) To protect the public interest, the commission may disclose information relating to an investigation or proceeding under this chapter to:

- (1) a law enforcement agency;
- (2) a public official who is authorized or required by law to appoint a person to serve as a judge;
- (3) the supreme court; or
- (4) an entity that provides commission-ordered education to judges.

(b) Information may be disclosed under this section only to the extent necessary for the recipient of the information to perform an additional duty or function.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 18, eff. Sept. 1, 2001.

Sec. 33.037. SUSPENSION PENDING APPEAL. If a judge who is convicted of a felony or a misdemeanor involving official misconduct appeals the conviction, the commission shall suspend the judge from office without pay pending final disposition of the appeal.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 18, eff. Sept. 1, 2001.

Sec. 33.038. AUTOMATIC REMOVAL. A judge is automatically removed from the judge's office if the judge is convicted of or is granted deferred adjudication for:

- (1) a felony; or
- (2) a misdemeanor involving official misconduct.

Added by Acts 2001, 77th Leg., ch. 917, Sec. 18, eff. Sept. 1, 2001.

SUBCHAPTER C. JUDICIAL CONDUCT

Sec. 33.051. SOLICITATION OR ACCEPTANCE OF REFERRAL FEES OR GIFTS BY JUDGE; CRIMINAL PENALTY. (a) A judge commits an offense if the judge solicits or accepts a gift or a referral fee in exchange for referring any kind of legal business to an attorney or law firm. This subsection does not prohibit a judge from:

(1) soliciting funds for appropriate campaign or officeholder expenses as permitted by Canon 4D, Code of Judicial Conduct, and state law; or

(2) accepting a gift in accordance with the provisions of Canon 4D, Code of Judicial Conduct.

(b) It is an affirmative defense to prosecution under Subsection (a) that:

(1) the judge solicited the gift or referral fee before taking the oath of office but accepted the gift or fee after taking the oath of office; or

(2) the judge solicited or accepted the gift or referral fee after taking the oath of office in exchange for referring to an attorney or law firm legal business that the judge was engaged in but was unable to complete before taking the oath of office.

(c) An offense under this section is a Class B misdemeanor.

(d) If, after an investigation, the commission determines that a judge engaged in conduct described by Subsection (a) to which Subsection (b) does not apply, the commission may issue a sanction against the judge or institute formal proceedings, regardless of whether the judge is being prosecuted or has been convicted of an offense under this section.

(e) An attorney or judge who has information that a judge engaged in conduct described by Subsection (a) to which Subsection (b) does not apply shall file a complaint with the commission not later than the 30th day after the date the attorney or judge obtained the information. A judge who fails to comply with this subsection is subject to sanctions by the commission. An attorney who fails to comply with this subsection is subject to discipline by the Commission for Lawyer Discipline under Subchapter E, Chapter 81.

(f) For purposes of this section:

(1) "Judge" does not include a constitutional county court judge, a statutory county court judge who is authorized by law to engage in the private practice of law, a justice of the peace, or a municipal court judge, if that judge or justice of the peace solicits or accepts a gift or a referral fee in exchange for referring legal business that involves a matter over which that judge or justice of the peace will not preside in the court of that judge or justice of the peace.

(2) "Referral fee" includes forwarding fees, acknowledgment fees, and any form of payment, benefit, or compensation related to the referral or placement of a potential client for legal services.

Added by Acts 2003, 78th Leg., ch. 850, Sec. 1, eff. Sept. 1, 2003.