



STATE OF OREGON
OREGON STATE SENATE
SALEM 97310

January 18, 1967

TO MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

The Judicial Council has requested the Judiciary Committee to introduce the bills briefly explained below "at the request of the Judicial Council." Will you please indicate your preference on this action. Introduction of the bills will, of course, imply neither approval nor disapproval by any member.

- SB 129 (1) Judicial discipline and removal (Joint Resolution amending Constitution)
- SB 124 (2) Companion measure to above Resolution amending statute
- SB 122 (3) Permissive electronic court reporting
- SB 123 (4) Elimination of Justice Courts within 25 miles of District Courts

Senator Mahoney	<u>R. Mahoney</u>	Yes <u>X</u>	No <u> </u>
Senator Yturri	<u>Ry</u>	Yes <u>X</u>	No <u> </u>
Senator Cook	<u>Don Cook</u>	Yes <u>X</u>	No <u> </u>
Senator Eivers	<u>John Eivers</u>	Yes <u>X</u>	No <u> </u>
Senator Fadeley	<u>Ed Fadeley</u>	Yes <u>X</u>	No <u> </u>
Senator Husband	<u>Donald L. Husband</u>	Yes <u>X</u>	No <u> </u>
Senator Lent	<u>W. L. Lent</u>	Yes <u>X</u>	No <u> </u>
Senator McKay	<u>Donald W. McKay</u>	Yes <u>X</u>	No <u> </u>
Senator Willner	<u>Donald Willner</u>	Yes <u>X</u>	No <u> </u>

MINUTES OF MEETING

SENATE JUDICIARY COMMITTEE
Room 113 Capitol Building
March 13, 1967
1:00 p.m.

Present: Mahoney, Chairman; Yturri, Vice Chairman;
Cook, Eivers, Fadeley, Husband, Lent, McKay, Willner;
Paillette, Committee Counsel

Witnesses: Willard C. Schwenn, member of Judicial Council, Hillsboro
Chief Justice William C. Perry
Robert Chandler, Editor, Bend Bulletin, Bend
George Rhoten, Pioneer Trust Building, Salem
Judge Ed Allen, Circuit Court Judge, Eugene
Kathleen Beaufait, Legislative Counsel

Senate Bill 124 and Senate Joint Resolution 9

Mr. Willard Schwenn explained that he was Chairman of the subcommittee within the Judicial Council which had made the study on the question of discipline, censure and removal of judges. He outlined that the present procedure for removal of judges required an inordinate amount of time, was difficult to apply, required a full scale trial, was expensive, cumbersome and ineffective. His subcommittee found that other states had gone to a commission device -- specifically California, Texas, Illinois, Louisiana and New Jersey -- and the commission plan was being considered in Colorado, Florida and New Mexico. After considerable study and after discarding a detailed constitutional amendment, Senate Joint Resolution 9 was accepted by the Judicial Council.

Mr. Schwenn explained the operation of the proposal and noted that it differed from the California plan which required either removal or, in effect, acquittal. The Judicial Council felt provision should be made to permit suspension or censure, either publicly or privately, and under their proposal it would be permissive with the Supreme Court as to whether the judge should be removed while proceedings were pending and also as to whether he would be denied his pay while he was suspended.

Senator Lent asked if subsection (d) of SJR 9 was intended to be confined to the use of alcohol or if it was meant to be broad enough to include the use of drugs and intemperate language and Mr. Schwenn replied that he believed it would apply to either liquor or drugs but not to intemperate language and suggested that this wording be clarified if there was doubt concerning its intent. Senator Lent asked if the Council had given any consideration to judges who were habitually discourteous and disrespectful to lawyers and litigants and Mr. Schwenn called attention to the general language in subsection (1) of SJR09 -- "conduct that brings judicial office into disrepute."

Senator Cook asked Mr. Schwenn if his committee had made any effort to draft legislation following the philosophy of Article VII of the Constitution

rather than amending the Constitution. Mr. Schwenn replied that they wished to adopt the commission plan, and they felt a constitutional amendment was necessary to do so.

Chief Justice William C. Perry related that there had been judicial situations which could have been straightened out had there been some board or commission that could have applied some pressure. He pointed out that bad publicity for the judiciary resulted from a judge on trial and expressed approval of an implementing procedure for censure, suspension or removal in the event it was ever needed.

Senator Cook asked Judge Perry if it would be possible to do substantially as proposed in Senate Bill 124 without amending the Constitution and received a negative reply. Justice Perry explained that the Constitution spelled out procedures for trying judges as in a criminal trial and expressed grave doubts that the legislature could pass an Act that would permit it to be otherwise.

Mr. Robert Chandler stated that there was no one at present who would come under the provisions of the proposed legislation but this had not always been the case. He outlined that a comparable system had been used in California for about eight years during which the California commission had investigated 39 cases. He indicated that there had been a number of resignations of judges but only one case had gone to the Supreme Court and in that case the court held against the commission. One value of the procedure, he said, was that the cases originally go to the commission in confidence.

Mr. George Rhoten said he had talked to a California attorney, Mr. George Tidey, who had said before the adoption of the commission system in California, there was massive opposition to it but it had since been widely accepted and was recognized as one of the most progressive steps the state of California had taken. Mr. Tidey told Mr. Rhoten that the very presence of a board of this kind served to raise the level of the administration of justice and had urged that the statute in Oregon add the element of censure or suspension which was not a feature of the California law.

Senator Fadeley commented that the original constitutional section under consideration applied to all public officers and asked if the Judicial Council had considered making the commission device applicable to all public officers. Mr. Rhoten replied that the Judicial Council was dealing with judicial administration and not gone beyond that point. Senator Fadeley asked Mr. Rhoten if it bothered him to have a separate proceeding which would place judges in greater jeopardy than other public officials. Mr. Rhoten answered that a judicial office was a position of special trust and confidence, that lawyers were held to a higher degree of integrity than others, and he felt this was proper.

Senator Willner asked Kathleen Beaufait if she, as drafter of the measures, was satisfied that the scope of review had been adequately defined as being a de novo hearing. Miss Beaufait said she thought the wording adequate and added that the language was derived from the California statute.

Judge Ed Allen stated he had been requested by Robert Jones, President of the Circuit Court Judges Association, to act as Chairman of a committee to consider SB 124 and SJR 9. He had experienced difficulty in assembling his committee but had met with Judge Sanders of Roseburg and they had agreed on some recommendations. He added that he was not in a position to speak for the other judges.

Judge Allen objected to making judges responsible to an independent group who would be "looking over their shoulders." He said most judges agreed there should be a method whereby the incompetent judge could be removed from office. He did not agree, however, that the provision with respect to censure or suspension should be a part of the procedure. Any judge who was bad enough to be censured or suspended should be permanently removed from office, he said, because, for all practical purposes, he would have lost his effectiveness as well as the respect of the community. He proposed amendments which would retain the provision for removal of judges but would make no provision for censure or suspension.

Judge Allen objected to the general language in SJR 9 -- " . . . conduct that brings judicial office into disrepute, including but not limited to:" In subsection (d) he suggested substitution of "habitual drunkenness." Senator Cook asked if he would object to adding "or use of drugs" and Judge Allen said he would approve of that addition.

Judge Allen pointed out that the canons of judicial ethics were very stringent and suggested incorporation of amendments to provide that anyone suspended or disbarred from the Oregon State Bar could not be a judge.

In regard to Senate Bill 124 Judge Allen suggested that the commission, instead of requiring appointment of "three judges", should be composed of a circuit court judge, one district judge and one municipal or county judge. Since the Supreme Court was to be the reviewing body, he felt it was not appropriate to have the same man sitting at the trial level and at the appellate level.

With regard to recommendations for removal, Judge Allen was of the opinion that seven of the nine members of the commission should concur in the recommendation rather than a simple majority and it should also be specifically provided that the commission could make a determination that the complaint or request did not warrant further action of the commission.

Judge Allen was opposed to the provision for appointing masters and felt it should be deleted entirely. He also noted that no provision had been included for disposition of retirement funds of a judge removed from office. A substantial sum could be involved, he said, and proposed that the judge should be entitled to receive, without interest, a sum at least equal to the money he had contributed. He also proposed to add that any judge removed from office who was eligible for retirement pay should be entitled to such retirement pay as though he was retired voluntarily.

Chairman Mahoney asked Judge Allen to submit his amendments to Mr. Paillette and promised that the committee would consider them at an early date.

Mr. Chandler explained that the provision for masters had been included primarily to provide for a case which would require a long, involved accounting procedure.

Judge Allen said he did not believe the proposed council could function without adequate investigative staff and estimated it would cost approximately \$50,000 per biennium. The Chairman commented that inclusion of this appropriation would effectively kill the bill.

The meeting was adjourned.

Respectfully submitted,

Mildred E. Carpenter, Chief Clerk
Senate Judiciary Committee

should pass. He said Senate Bill 366 would in some respects be preferable because it would be less costly. If one should pass, he suggested an alternative solution would be to turn more of the fine revenue over to the counties to be used to pay the additional cost.

Executive session

Senate Bill 120

Senator Cook moved adoption of the following amendment to Senate Bill 120: On page 2 of the printed bill, after line 18, insert "After return of the warrant the court shall cause the registered owner of the vehicle to be notified of the complaint. Upon the request of the owner, the vehicle shall be released to him by the court, pending the outcome of the hearing on the complaint." The motion carried. Voting for the motion: Cook, Eivers, Fadeley, Husband, Lent. Voting no: Yturri, Mr. Chairman.

Senator Cook explained the reason for the bill and there was a discussion of its ramifications. Senator Yturri moved it be tabled and the motion carried. Voting for the motion: Eivers, Husband, Lent, Yturri, Mr. Chairman. Voting no: Cook, Fadeley.

Senate Bill 105

Senator Cook moved that the revisions on page 2, lines 12 through 14, be restored. The motion carried unanimously. Senator Yturri pointed out that the bill had been previously amended. Senator Husband stated he was opposed to the concept of the bill and, after further discussion, moved that it be tabled. The motion failed. Voting for the motion: Eivers, Husband. Voting no: Cook, Fadeley, Lent, McKay, Yturri, Mr. Chairman.

Senator Fadeley moved that section 2 read "The dissolution of a marriage contract may be declared even though both parties may be partially at fault." Motion carried. Voting for: Eivers, Fadeley, Husband, Lent, McKay. Voting no: Cook, Yturri, Mr. Chairman.

After further discussion, Senator Cook moved that the bill be reported out do pass as amended and the motion failed. Voting for: Cook, Fadeley, Lent, McKay. Voting no: Eivers, Husband, Yturri, Mr. Chairman.

Senate Bill 124 and Senate Joint Resolution 9

Copies of Senate Bill 124 and Senate Joint Resolution 9 had been amended in accordance with the suggestions made by Judge Allen at the earlier hearing on these measures and distributed to each member of the committee. Chairman Mahoney read portions of a letter from Roy Kilpatrick, attorney, Canyon City, expressing criticism of, and doubting the need for, the measures.

Senator Cook moved that the amendments suggested by Judge Allen to Senate Joint Resolution 9 be adopted plus a further amendment on page 2, line 18: After "Habitual drunkenness" add "or illegal use of narcotic drugs". The motion carried unanimously. Senator Cook then moved that Senate Joint Resolution 9 be reported out do pass as amended and the motion carried unanimously.

Senator Lent was excused from the meeting at this point.

Senator Fadeley moved that Senate Bill 124 be amended on page 7, line 18, to allow the chairman and vice chairman to issue process without waiting until the next full commission meeting. The motion carried unanimously.

Senator Yturri then moved that Senate Bill 124 be reported out do pass as amended and the motion carried. Voting for the motion: Eivers, Fadeley, Husband, McKay, Yturri, Mr. Chairman. Voting no: Cook. Chairman Mahoney, at Senator Yturri's request, said he would lead the floor discussion on both measures.

Senate Bill 134

Senator Cook spoke in opposition to Senate Bill 134. Senator Yturri pointed out that the bill had been previously discussed and the majority of the committee had decided on a seven year limitation. He moved to substitute "seven" for "six" on page 3, line 11. The motion carried unanimously. Senator Yturri then moved that the bill be reported out do pass as amended and the motion carried. Voting for the motion: Eivers, Husband, McKay, Yturri, Mr. Chairman. Voting no: Cook, Fadeley.

Senate Bill 234

Mr. Paillette called attention to the amendment on page 3 of Senate Bill 234 which he had prepared in accordance with the committee's previous request to resolve conflicts between Senate Bills 234 and 405. Senator Fadeley explained that both bills had been introduced because there was a lack of uniformity in counting the time served. The only question, he said, was that it might encourage a man to stay in the county jail pending an appeal.

Mr. Paillette noted there had been discussion earlier that Senate Bill 234 applied to Oregon Correctional Institution and the penitentiary whereas Senate Bill 405 applied to county jails. He explained that ORS 137.390 referred to ORS 137.370 and by reference Senate Bill 234 would apply to county jail sentences as well as sentences to the penitentiary and OCI.

Senator Fadeley moved that the amendments to Senate Bill 234 be accepted and the motion carried unanimously. He next moved that the bill be reported out do pass as amended and this motion also carried unanimously.

Senate Bill 241

Senator Fadeley noted that Senate Bill 241 had been previously amended and moved that it be reported out do pass as amended. The motion carried unanimously.

Senate Bill 347

Senator Yturri moved that Senate Bill 347 be reported out do pass and the motion carried unanimously.



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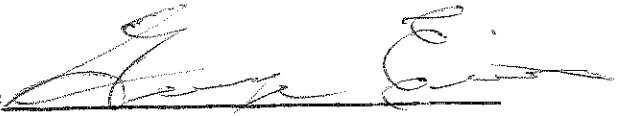
THOMAS R. MAHONEY, CHAIRMAN
ANTHONY YTURRI, VICE CHAIRMAN
VERNON COOK
GEORGE EIVERS
EDWARD N. FADELEY
DONALD R. HUSBAND
BERKELEY LENT
GORDON W. MCKAY
DON S. WILLNER
DONALD L. PAILLETTE, COUNSEL
MILDRED E. CARPENTER,
CHIEF CLERK

Date: March 23, 1967
To: Members of Senate Judiciary Committee
From: Thomas R. Mahoney, Chairman

Yesterday the committee voted a "do pass as amended" recommendation on Senate Joint Resolution 9. The amendments adopted would delete reference to "censured or suspended" on line 8, page 2, of the resolution. To conform Senate Bill 124 to this amendment, we would need to change any reference to the "Commission on Judicial Fitness" to the "Commission on Judicial Removal" and delete references in the bill to censure or suspension.

Will you please indicate below whether you would approve such amendments to Senate Bill 124.

Yes ✓ No

Signature 

Also voting yes (letters on file):

Cook, Fadeley, Husband, Lent, McKay, Yturri, Mr. Chairman.

SJR 9 originally included as a ground -- to bring the judicial office into disrepute including but not limited --- and listed several specific acts. This was replaced with "Conviction in a court of this or any other state, or of the United States, of a crime punishable as a felony or a crime involving moral turpitude."

There could be wilful misconduct in judicial office, which would not be beneficial to a judicial system, but would not be grounds for investigating judge under judicial duties.

Mr. Schwen believed the Senate improved the temperance provision by substituting "drunkenness or use of narcotic drugs. They also added grounds as suspension or membership from Oregon State Bar, which would apply to both judges as member of the Oregon State Bar and those who were not. The amendments constrict the behavior that could be examined.

SB 124 - Providing for members of Commission on Judicial Fitness

Mr. Schwen continued his testimony on this bill which provides for the commission which would be composed of 3 members of the Oregon State Bar, 3 judges appointed by the Supreme Court and 3 laymen appointed by the Governor subject to conformation by the Senate. This also includes technical procedures such as confidentiality of proceedings, and removal would have to be on majority recommendation.

Mr. Schwen reiterated this legislation is preventative and anticipatory, and not because they feel they have a situation presently in Oregon.

Rep. Harland asked what the reasons were for the removal of of approximately 25 judges in California. Mr. Schwen answered that California uses the language "misconduct which brings the judicial office into disrepute" In some instances this would involve personal moral conduct.

Rep. Harland asked if he personally would like to restore the language the Senate deleted, and he answered yes.

In answer to Rep. Davis' question regarding mental incompetency, Mr. Schwen said there could be some question. The present statutes only deal with senility and age and are not broad enough.

Rep. Skelton wished him to define moral turpitude as he was unable to find it in ORS index? Mr. Schwen stated they would have to go to case law. Rep. Skelton disagreed with this procedure. Mr. Schwen added a commission would first conduct a hearing, but only after considerable consequences. Many recommendations would have to go to the Supreme Court and he had no fear for abuse.

Rep. Skelton questioned incurring the displeasure of the IRS, and Mr. Schwen answered that under this bill there would have to be an actual conviction, he also believed the Oregon State Bar requires a conviction before disbaring.

Rep. L. Johnson was concerned with the commission holding private hearings. Mr. Schwen felt they were necessary because it would be tragic for a judge brought in on a hearing with the

inclination to the public that where "there is smoke there must be some fire". If he wished a public hearing it would be arranged. The Commission would make the recommendation for removal and at that time could be made public. The final order would be entered by the Supreme Court. The Senate felt confidentiality was necessary when they took out general language. It would be a mistake to have to convict a judge before removal.

Another point was the plan as proposed, the commission could confront the judge with accusations, and experience indicates the judge would attempt to correct the problem. However, under the objection, this would be impossible because they are saying ---if judge is bad enough convict him. This would be a better approach as gives the commission some flexibility.

In further questioning by Rep. L. Johnson Mr. Schwen answered wilful misconduct in a judicial office would be obviously contemplated bad faith. The word misconduct is subjective but the commission would have to make decision. The only alternative would be to spell out and this would defeat the purpose of brevity.

Chief Justice Perry, appeared in favor of this approach. He would construe "wilful misconduct" as being limited to the duties as a judge, such as acts like accepting bribes. He believes judges should be as responsible to requirements of morality and decency in judicial work as any other individual. The present method of recall and public impeachment do not meet the requirements.

He does not approve of the Senate amendments as suspension or disbarment is carrying it too far and would put an extra burden on the State Bar. He would prefer more flexibility. Although some wouldn't agree, there would be merit in censure and could be very effective.

In regard to moral turpitude, he stated a case involving income tax where there was failure to file would not mean moral turpitude. However, wilful misrepresentation of income where you have a knowledgeable fact would involve moral turpitude.

HB 1635 - Authorizes Oregon State Bar to adopt Client Security Fund plan

Rep. Howard Willits first appeared in favor of bill and stated the primary purpose is to protect the public from defecating lawyers and to enhance the image of the legal profession so that any client may approach any lawyer with full measure of confidence. This applies to a very small number and the legal profession need not feel they are only part of society with such requirements. There has been a great deal of interest and several newspapers have recently contained editorials.

George Hibbard, Oregon City lawyer, and Chairman of Oregon State Bar Clients' Security Fund Committee next appeared and called attention to a digest of the history of such a fund prepared by a

Rep. Harlan moved to restore language on lines 9 and 10 "conduct that brings judicial office into disrepute . . .". Motion Failed. Aye: Harlan, Skelton and Wilson--others No. (Bedingfield absent).

Rep. Johnson moves to amend by inserting a new item d "misconduct involving moral turpitude". The thing he is trying to get at is that this is a constitutional amendment which he thinks should be defined by law. Rep. Harlan says Justice Perry indicated language on lines 9 and 10 was the most important language. Rep. Johnson opposes that, and moves to send SJR 9 to the Floor with Do Pass as Amended recommendation. Vote resulted in tie vote. Aye: Carson, Frost, Redden and Skelton. No: Harlan, Davis, Johnson and Wilson. Rep. Davis moves an amendment, a new subsection, "wilful misconduct in judicial office involving moral turpitude" which would take care of the convicted act. Discussion about meaning of moral turpitude. Motion Carried. Aye: Harlan, Carson, Davis, Johnson and Wilson. No: Frost and Redden. Rep. Johnson moves to send HJR 9 as amended to the Floor with Do Pass recommendation. Motion Carried. Aye: Harlan, Carson, Davis, Johnson and Wilson. No: Frost, Redden. Rep. Johnson will carry.

SB 124 - Removal of Judges

Rep. Harlan moves Do Pass on SB 124. After discussion, Rep. Redden moved to adopt proposed amendment: Pg. 2, line 14, restore "fitness" and delete "removal". Same thing Pg. 3, line 16. Motion Carried--unanimous vote. (Bedingfield and Skelton gone). Rep. Harlan moved to send SB 124 to Floor Do Pass as Amended. Motion Carried. Same vote. Rep. Redden will carry.

SB 186 - Circuit Court Reporters Retirement

It is the understanding that this is what they have been doing for some time, and all at once an AG opinion says they don't have the authority, and they are going to have to go back and pay to the state for a long period of time. Rep. Harlan moves to Floor Do Pass. Motion carried. All voted Aye except Rep. Wilson dissenting. Rep. Carson will carry.

SB 207 - Appointed Guardian in Adoption

Rep. Redden moves SB 207 to Floor Do Pass. Motion carried. Unanimous vote (Bedingfield and Skelton absent). Rep. Flitcraft will carry.

SB 234 - Prison Sentence

Rep. Redden moves SB 234 to Floor with Do Pass recommendation. Motion Carried. Aye: Harlan, Carson, Davis, Redden & Wilson. No: Frost and Johnson. Rep. Davis will carry.

OREGON LEGISLATIVE ASSEMBLY—1967 REGULAR SESSION

Senate Bill 124

SPONSORED BY Committee on Judiciary (at the request of the
Judicial Council)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Contingent upon enactment of a constitutional amendment providing for censure, discipline and removal of judges by Supreme Court. Provides for creation of a nine member Commission on Judicial Fitness and prescribes procedures for its receipt of complaints, holding of hearings and recommendations to Supreme Court in cases of alleged judicial unfitness.

*Amendments suggested
by Judge Allen*

NOTE: Matter underscored in an amended section is new; matter [bracketed] is existing law to be omitted; complete new sections begin with SECTION.

A BILL FOR
AN ACT

1 Relating to ~~censure, suspension or~~ removal of judges, includ-
2 ing but not limited to the creation of a Commission on
3 Judicial ^{Removal} Fitness; and prescribing an effective date.

4 Be It Enacted by the People of the State of Oregon:

5 **SECTION 1.** Sections 2 to 15 of this Act shall not be
6 operative unless the Constitution of Oregon is amended by
7 vote of the people at the regular general election in 1968
8 so as to adopt section 8, Article VII (Amended) thereof, as
9 proposed by _____ Joint Resolution _____ of the Fifty-
10 fourth Legislative Assembly (Regular Session). Sections 2
11 to 15 of this Act shall become effective upon the effective
12 date of such amendment.

13 **SECTION 2.** (1) There is created the Commission on
14 Judicial ^{Removal} Fitness consisting of:

One circuit judge; one district judge; and either one justice of the peace,
municipal judge or county judge

17 of the Oregon State Bar from among persons admitted to
18 practice law in this state; and

19 (c) Three persons appointed by the Governor who are
20 not qualified under either paragraph (a) or (b) of this
21 subsection.

22 (2) The term of a member is six years, but whenever a
23 member ceases to meet the qualifications under which he was

1 appointed, his membership shall end. Before the expiration
2 of the term of a member, his successor shall be appointed
3 to perform the functions of a member on the day next follow-
4 ing expiration of the term of the member. In case of a
5 vacancy for any cause, the appointing authority shall make
6 an appointment to become immediately effective for a six-
7 year term.

8 (3) Appointments by the Governor are subject to con-
9 firmation by the Senate by the affirmative vote of two-thirds
10 of the senators voting on the confirmation, a quorum being
11 present. If the appointment is made in the interim between
12 legislative sessions, the Senate shall act pursuant to
13 ORS 171.560.

14 SECTION 3. Notwithstanding the term specified in
15 section 2 of this Act, of the members first appointed to
16 the Commission on Judicial Fitness by each appointing auth-
17 ority:

18 (1) One shall serve for a term ending June 30, 1972.

19 (2) One shall serve for a term ending June 30, 1973.

20 (3) One shall serve for a term ending June 30, 1974.

21 SECTION 4. A member of the Commission on Judicial Fit-
22 ness shall receive no compensation for his services as a
23 member; but, subject to any other applicable law regulating
24 travel and other expenses for state officers and employes,
25 he shall receive his actual and necessary travel and other
26 expenses incurred in the performance of his official duties.

1 SECTION 5. (1) The Commission on Judicial ~~Fitness~~ ^{Removal}
2 shall select one of its members as chairman, and another
3 as vice chairman, for such terms and to perform such funct-
4 ions as the commission shall determine.

5 (2) A majority of the commission constitutes a quorum
6 for the transaction of business. Every recommendation on
7 matters relating to the ~~censure, suspension or removal~~ of
8 a judge to the Supreme Court must be concurred in by ~~a seven~~ ^{seven}
9 ~~majority~~ of the members of the commission.

10 SECTION 6. (1) Upon complaint from any person con-
11 cerning the conduct of a judge or upon request of the Su-
12 preme Court, and after such investigation as the Commission
13 on Judicial ~~Fitness~~ ^{Removal} considers necessary, the commission may:

(a) Make a determination that the complaint or request does not warrant this
further action of the commission; or
15 section, to inquire into the same.

16 ~~(b) Request the Supreme Court to appoint three qual-~~
17 ~~ified persons to act as masters and to report to the com-~~
18 ~~mission on the conduct of the judge.~~

19 (2) The commission shall adopt rules of procedure
20 governing all proceedings under this section. The hearings
21 shall be private unless the judge whose conduct is subject
22 of the hearing requests a public hearing. The judge shall
23 have the right to be present and to be heard, to be rep-
24 resented by counsel and to present through witnesses any
25 competent testimony relevant to the issue. Counsel shall
26 have the right to cross-examine witnesses.

1 ~~[(3) If masters are appointed, they shall conduct a~~
2 ~~hearing pursuant to subsection (2) of this section and main-~~
3 ~~tain a record on the matter referred to them.]~~

4 (4) If, after hearing ~~[or after considering the record~~
5 ~~and report of the masters,]~~ the commission finds that the
6 conduct of the judge ~~brings the judicial office into dis-~~ *justifies removal from office*
7 ~~repute,~~ the commission shall recommend to the Supreme Court
8 the ~~censure or suspension or~~ removal of the judge.

9 ~~[(5) During the pendency of any proceedings under this~~
10 ~~section, the Supreme Court by order may disqualify the judge~~
11 ~~whose conduct is the subject of such proceedings from ex-~~
12 ~~ercising any judicial function.]~~

13 Section 7. (1) The Supreme Court shall review the
14 record of the proceedings under section 6 of this Act on
15 the law and facts and may receive additional evidence. The
16 Supreme Court ~~may censure the judge or it may order the~~
17 ~~judge suspended or removed from office.~~

18 ~~[(2) Upon an order of suspension, the judge shall be~~
19 ~~suspended from office for the period specified in the order~~
20 ~~and his salary shall cease, if so ordered, from the date of~~
21 ~~the order until the end of the specified period. However,~~
22 ~~suspension does not create a vacancy in the office of judge~~
23 ~~during the period of suspension.]~~

24 (3) Upon an order for removal, the judge shall be
25 removed from office and his salary shall cease and his of-
26 fice is vacant on the date of such order.

1 SECTION 8. (1) Papers filed in proceedings under
2 section 6 of this Act are not public records. Papers filed
3 and testimony given in such proceedings are considered priv-
4 ileged communications except in judicial proceedings directly
5 connected with the administration of this Act. The record
6 filed by the Commission on Judicial ^{Removal} ~~Fitness~~ with the Supreme
7 Court becomes a public record upon such filing.

8 (2) Members of the Commission on Judicial ^{Removal} ~~Fitness~~,
9 ~~masters appointed pursuant to section 6 of this Act and all~~
10 subordinates and employes of the commission shall not dis-
11 close or use the contents of any records, files, papers or
12 communications filed with or made to any of them in their
13 official capacity for purposes other than those directly
14 connected with the administration of this Act.

15 SECTION 9. A judge who is a member of the Commission
16 on Judicial ^{Removal} ~~Fitness~~ or of the Supreme Court ~~or who acts as a~~
17 ~~master under section 6 of this Act~~ shall not participate in
18 any proceedings involving his own conduct except in his own
19 defense.

20 SECTION 10. The Commission on Judicial ^{Removal} ~~Fitness~~ may:

21 (1) Subject to the State Civil Service Law, appoint
22 such subordinates and employes as the commission considers
23 necessary to carry out the duties and powers vested in the
24 commission.

25 (2) Request the assistance of and compensate expert
26 witnesses and special counsel.

27 (3) By its chairman or vice chairman, take and

1 preserve testimony and administer oaths to witnesses on any
2 matter within its jurisdiction.

3 (4) Upon majority vote of its members or upon request
4 of the judge whose conduct is subject to a hearing under
5 section 6 of this Act, ~~authorize~~ ^{shall} its chairman or vice chair-
6 man ~~to~~ issue any processes necessary to compel the attend-
7 ance of witnesses and the production of any books, papers,
8 records or documents as may be required.

9 (5) The commission shall adopt rules of procedures
10 governing proceedings under section 6 of this Act.

11 SECTION 11. Each witness compelled to attend any
12 proceedings under section 6 of this Act, other than an
13 officer or employe of the state, a public corporation, or
14 a political subdivision, shall receive for his attendance
15 the same fees and mileage allowance allowed by law to a
16 witness in a civil case, payable from funds appropriated to
17 the commission.

18 SECTION 12. Process issued by the commission shall be
19 served by the sheriff of the county where the person to whom
20 it is directed is found, or by any competent person 21 years
21 of age or older who is a resident of this state, in the
22 manner prescribed for the service of a summons upon a de-
23 fendant in a civil proceedings. The process shall be re-
24 turned to the authority issuing it within 10 days after its
25 delivery to the person for service, with proof of service
26 or proof that the person cannot be found. A person other

1 than an officer making service shall give proof thereof
2 by his affidavit in the same manner as ORS 15.110. When
3 served outside the county in which the process originated,
4 the process may be returned by mail. The person to whom
5 the process is delivered shall indorse thereon the date of
6 delivery.

7 SECTION 13. (1) Whenever a person summoned by the
8 Commission on Judicial ^{Removal} ~~Fitness~~ fails to appear to testify
9 or fails to produce any books, papers, records or docu-
10 ments as required, or whenever any person so summoned
11 refuses to answer any question pertinent to the subject
12 under inquiry before the commission, ~~or the masters ap-~~
13 ~~pointed pursuant to section 6 of this Act,~~ the commission
14 may apply to the circuit court for the county in which the
15 failure occurred for an order to the person to attend and
16 testify, or otherwise to comply with the demand or request
17 of the commission ~~or the masters.~~

18 (2) The application to the court shall be by ex
19 parte motion upon which the court shall make an order re-
20 quiring the person against whom it is directed to comply
21 with the demand or request of the commission within three
22 days after service of the order, or within such further
23 time as the court may grant, or to justify the failure
24 within that time.

25 (3) The order shall be served upon the person to
26 whom it is directed in the manner required by this state

1 for the service of process, which service is required to
2 confer jurisdiction upon the court. Failure to obey an
3 order issued by the court under this section is contempt
4 of court.

5 **SECTION 14.** Any testimony given by a witness com-
6 pelled to appear before the Commission on Judicial ^{Removal} ~~Fitness~~
7 ~~or the masters appointed pursuant to section 6 of this Act~~
8 shall not be used against him in any criminal action or
9 proceeding, nor shall any criminal action or proceeding be
10 brought against such witness on account of any testimony
11 so given by him, except for perjury committed before the
12 commission or the masters.

13 **SECTION 15.** (1) For purposes of any retirement
14 benefits to which a judge may be entitled as a judge,
15 during the time any judge is suspended without pay under
16 section 7 of this Act, he shall not be entitled to make
17 any contribution toward such benefits nor shall the state
18 make any contribution on his behalf.

19 (2) Any period of time for which a judge is sus-
20 pended under section 7 of this Act shall be excluded in
21 computing the length of his service. However, suspension
22 of a judge who is a member of the Public Employees' Retire-
23 ment System under ORS 237.001 to 237.315 does not break
24 the continuity of his membership in the system.]

—◆—
See next page

Section 15. A judge removed from office under the provisions of this Act who is not entitled to either retire under the provisions of ORS chapter 1, or contribute to the Judges' Retirement Fund as authorized by ORS 1.318, shall be entitled to receive, without interest, a sum equal to the aggregate deductions from his salary as contributions to the Judges' Retirement Fund as provided by ORS chapter 1.

Section 16. Any judge removed from office under the provisions of this Act who is eligible for retirement pay under the provisions of ORS chapter 1 shall be entitled to such retirement pay as though he had retired voluntarily.

Senate Bill 124

SPONSORED BY Committee on Judiciary (at the request of the Judicial Council)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Contingent upon enactment of a constitutional amendment providing for censure, discipline and removal of judges by Supreme Court. Provides for creation of a nine member Commission on Judicial Fitness and prescribes procedures for its receipt of complaints, holding of hearings and recommendations to Supreme Court in cases of alleged judicial unfitness.

Amendments suggested by

Judge Allen

NOTE: Matter underscored in an amended section is new; matter [bracketed] is existing law to be omitted; complete new sections begin with SECTION.

A BILL FOR
AN ACT

1 Relating to ~~censure, suspension or~~ removal of judges, includ-
2 ing but not limited to the creation of a Commission on
3 Judicial ^{Removal} ~~Fitness~~; and prescribing an effective date.

4 Be It Enacted by the People of the State of Oregon:

5 **SECTION 1.** Sections 2 to 15 of this Act shall not be
6 operative unless the Constitution of Oregon is amended by
7 vote of the people at the regular general election in 1968
8 so as to adopt section 8, Article VII (Amended) thereof, as
9 proposed by _____ Joint Resolution _____ of the Fifty-
10 fourth Legislative Assembly (Regular Session). Sections 2
11 to 15 of this Act shall become effective upon the effective
12 date of such amendment.

13 **SECTION 2.** (1) There is created the Commission on
14 Judicial ^{Removal} ~~Fitness~~ consisting of:

15 (a) ^{One circuit judge; one district judge; and either one justice of the peace,}
~~Three judges~~ appointed by the Supreme Court; ^{municipal judge}
^{or county judge}

16 (b) Three persons appointed by the Board of Governors
17 of the Oregon State Bar from among persons admitted to
18 practice law in this state; and

19 (c) Three persons appointed by the Governor who are
20 not qualified under either paragraph (a) or (b) of this
21 subsection.

22 (2) The term of a member is six years, but whenever a
23 member ceases to meet the qualifications under which he was

1 appointed, his membership shall end. Before the expiration
2 of the term of a member, his successor shall be appointed
3 to perform the functions of a member on the day next follow-
4 ing expiration of the term of the member. In case of a
5 vacancy for any cause, the appointing authority shall make
6 an appointment to become immediately effective for a six-
7 year term.

8 (3) Appointments by the Governor are subject to con-
9 firmation by the Senate by the affirmative vote of two-thirds
10 of the senators voting on the confirmation, a quorum being
11 present. If the appointment is made in the interim between
12 legislative sessions, the Senate shall act pursuant to
13 ORS 171.560.

14 SECTION 3. Notwithstanding the term specified in
15 section 2 of this Act, of the members first appointed to
16 the Commission on Judicial Fitness by each appointing auth-
17 ority:

18 (1) One shall serve for a term ending June 30, 1972.

19 (2) One shall serve for a term ending June 30, 1973.

20 (3) One shall serve for a term ending June 30, 1974.

21 SECTION 4. A member of the Commission on Judicial Fit-
22 ness shall receive no compensation for his services as a
23 member; but, subject to any other applicable law regulating
24 travel and other expenses for state officers and employes,
25 he shall receive his actual and necessary travel and other
26 expenses incurred in the performance of his official duties.

1 SECTION 5. (1) The Commission on Judicial ^{Removal} ~~Fitness~~
 2 shall select one of its members as chairman, and another
 3 as vice chairman, for such terms and to perform such funct-
 4 ions as the commission shall determine.

5 (2) A majority of the commission constitutes a quorum
 6 for the transaction of business. Every recommendation on
 7 matters relating to the ~~censure, suspension or removal~~ of
 8 a judge to the Supreme Court must be concurred in by ~~X~~ ^{seven}
 9 majority of the members of the commission.

10 SECTION 6. (1) Upon complaint from any person con-
 11 cerning the conduct of a judge or upon request of the Su-
 12 preme Court, and after such investigation as the Commission
 13 on Judicial ^{Removal} ~~Fitness~~ considers necessary, the commission may:

- (a) ~~Hold a hearing pursuant to subsection (2) of this~~
 14 ~~into the conduct of the judge; or~~
 15 ~~Make a determination that the complaint or request does not warrant~~
 16 ~~further action of the commission; or~~
 17 ~~to appoint three qual-~~
 18 ~~ified persons to act as~~ ~~the com-~~
 19 ~~mission on the conduct of the judge.~~

20 (2) The commission shall adopt rules of procedure
 21 governing all proceedings under this section. The hearings
 22 shall be private unless the judge whose conduct is subject
 23 of the hearing requests a public hearing. The judge shall
 24 have the right to be present and to be heard, to be rep-
 25 resented by counsel and to present through witnesses any
 26 competent testimony relevant to the issue. Counsel shall
 have the right to cross-examine witnesses.

1 ~~[(3) If masters are appointed, they shall conduct a~~
2 ~~hearing pursuant to subsection (2) of this section and main-~~
3 ~~tain a record on the matter referred to them.]~~

4 (4) If, after hearing ~~[or after considering the record~~
5 ~~and report of the masters,]~~ the commission finds that the
6 conduct of the judge ~~[brings the judicial office into dis-~~
7 ~~repute,]~~ *justifies removal from office* the commission shall recommend to the Supreme Court
8 the ~~[censure or suspension]~~ or removal of the judge.

9 ~~[(5) During the pendency of any proceedings under this~~
10 ~~section, the Supreme Court by order may disqualify the judge~~
11 ~~whose conduct is the subject of such proceedings from ex-~~
12 ~~ercising any judicial function.]~~

13 Section 7. (1) The Supreme Court shall review the
14 record of the proceedings under section 6 of this Act on
15 the law and facts and may receive additional evidence. The
16 Supreme Court ~~[may censure the judge or it]~~ may order the
17 judge ~~[suspended or]~~ removed from office.

18 ~~[(2) Upon an order of suspension, the judge shall be~~
19 ~~suspended from office for the period specified in the order~~
20 ~~and his salary shall cease, if so ordered, from the date of~~
21 ~~the order until the end of the specified period. However,~~
22 ~~suspension does not create a vacancy in the office of judge~~
23 ~~during the period of suspension.]~~

24 (3) Upon an order for removal, the judge shall be
25 removed from office and his salary shall cease and his of-
26 fice is vacant on the date of such order.

1 SECTION 8. (1) Papers filed in proceedings under
2 section 6 of this Act are not public records. Papers filed
3 and testimony given in such proceedings are considered priv-
4 ileged communications except in judicial proceedings directly
5 connected with the administration of this Act. The record
6 filed by the Commission on Judicial ^{Removal} ~~Fitness~~ with the Supreme
7 Court becomes a public record upon such filing. ^{Removal}

8 (2) Members of the Commission on Judicial ~~Fitness~~,
9 ~~[masters appointed pursuant to section 6 of this Act]~~ and all
10 subordinates and employees of the commission shall not dis-
11 close or use the contents of any records, files, papers or
12 communications filed with or made to any of them in their
13 official capacity for purposes other than those directly
14 connected with the administration of this Act.

15 SECTION 9. A judge who is a member of the Commission
16 on Judicial ^{Removal} ~~Fitness~~ or of the Supreme Court ~~[or who acts as a~~
17 ~~master under section 6 of this Act]~~ shall not participate in
18 any proceedings involving his own conduct except in his own
19 defense.

20 SECTION 10. The Commission on Judicial ^{Removal} ~~Fitness~~ may:

21 (1) Subject to the State Civil Service Law, appoint
22 such subordinates and employees as the commission considers
23 necessary to carry out the duties and powers vested in the
24 commission.

25 (2) Request the assistance of and compensate expert
26 witnesses and special counsel.

27 (3) By its chairman or vice chairman, take and

1 preserve testimony and administer oaths to witnesses on any
2 matter within its jurisdiction.

3 (4) Upon majority vote of its members or upon request
4 of the judge whose conduct is subject to a hearing under
5 section 6 of this Act, ~~authorize~~ ^{shall} its chairman or vice chair-
6 man ~~to~~ issue any processes necessary to compel the attend-
7 ance of witnesses and the production of any books, papers,
8 records or documents as may be required.

9 (5) The commission shall adopt rules of procedures
10 governing proceedings under section 6 of this Act.

11 SECTION 11. Each witness compelled to attend any
12 proceedings under section 6 of this Act, other than an
13 officer or employe of the state, a public corporation, or
14 a political subdivision, shall receive for his attendance
15 the same fees and mileage allowance allowed by law to a
16 witness in a civil case, payable from funds appropriated to
17 the commission.

18 SECTION 12. Process issued by the commission shall be
19 served by the sheriff of the county where the person to whom
20 it is directed is found, or by any competent person 21 years
21 of age or older who is a resident of this state, in the
22 manner prescribed for the service of a summons upon a de-
23 fendant in a civil proceedings. The process shall be re-
24 turned to the authority issuing it within 10 days after its
25 delivery to the person for service, with proof of service
26 or proof that the person cannot be found. A person other

1 than an officer making service shall give proof thereof
2 by his affidavit in the same manner as ORS 15.110. When
3 served outside the county in which the process originated,
4 the process may be returned by mail. The person to whom
5 the process is delivered shall indorse thereon the date of
6 delivery.

7 SECTION 13. (1) Whenever a person summoned by the
8 Commission on Judicial ^{Removal} Fitness fails to appear to testify
9 or fails to produce any books, papers, records or docu-
10 ments as required, or whenever any person so summoned
11 refuses to answer any question pertinent to the subject
12 under inquiry before the commission, ~~[or the masters ap-~~
13 ~~pointed pursuant to section 6 of this Act.]~~ the commission
14 may apply to the circuit court for the county in which the
15 failure occurred for an order to the person to attend and
16 testify, or otherwise to comply with the demand or request
17 of the commission ~~or the masters.~~

18 (2) The application to the court shall be by ex
19 parte motion upon which the court shall make an order re-
20 quiring the person against whom it is directed to comply
21 with the demand or request of the commission within three
22 days after service of the order, or within such further
23 time as the court may grant, or to justify the failure
24 within that time.

25 (3) The order shall be served upon the person to
26 whom it is directed in the manner required by this state

1 for the service of process, which service is required to
2 confer jurisdiction upon the court. Failure to obey an
3 order issued by the court under this section is contempt
4 of court.

5 **SECTION 14.** Any testimony given by a witness com-
6 pelled to appear before the Commission on Judicial ~~Fitness~~ *Removal*
7 ~~or the masters appointed pursuant to section 6 of this Act~~
8 shall not be used against him in any criminal action or
9 proceeding, nor shall any criminal action or proceeding be
10 brought against such witness on account of any testimony
11 so given by him, except for perjury committed before the
12 commission or the masters.

13 **SECTION 15.** (1) For purposes of any retirement
14 benefits to which a judge may be entitled as a judge,
15 during the time any judge is suspended without pay under
16 section 7 of this Act, he shall not be entitled to make
17 any contribution toward such benefits nor shall the state
18 make any contribution on his behalf.

19 (2) Any period of time for which a judge is sus-
20 pended under section 7 of this Act shall be excluded in
21 computing the length of his service. However, suspension
22 of a judge who is a member of the Public Employees' Retire-
23 ment System under ORS 237.001 to 237.315 does not break
24 the continuity of his membership in the system.

See next page

Section 15. A judge removed from office under the provisions of this Act who is not entitled to either retire under the provisions of ORS chapter 1, or contribute to the Judges' Retirement Fund as authorized by ORS 1.318, shall be entitled to receive, without interest, a sum equal to the aggregate deductions from his salary as contributions to the Judges' Retirement Fund as provided by ORS chapter 1.

Section 16. Any judge removed from office under the provisions of this Act who is eligible for retirement pay under the provisions of ORS chapter 1 shall be entitled to such retirement pay as though he had retired voluntarily.

Senate Bill 124

From Judge Allen
SPONSORED BY Committee on Judiciary (at the request of the Judicial Council)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Contingent upon enactment of a constitutional amendment providing for censure, discipline and removal of judges by Supreme Court. Provides for creation of a nine member Commission on Judicial Fitness and prescribes procedures for its receipt of complaints, holding of hearings and recommendations to Supreme Court in cases of alleged judicial unfitness.

NOTE: Matter underscored in an amended section is new; matter [bracketed] is existing law to be omitted; complete new sections begin with SECTION.

A BILL FOR
AN ACT

Relating to ~~(censure, suspension or)~~ removal of judges, including but not limited to the creation of a Commission on Judicial ^{Removal} ~~Fitness~~; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 15 of this Act shall not be operative unless the Constitution of Oregon is amended by vote of the people at the regular general election in 1968 so as to adopt section 8, Article VII (Amended) thereof, as proposed by _____ Joint Resolution _____ of the Fifty-fourth Legislative Assembly (Regular Session). Sections 2 to 15 of this Act shall become effective upon the effective date of such amendment.

SECTION 2. (1) There is created the Commission on

Judicial ^{Removal} ~~Fitness~~ consisting of:

- One Circuit Judge; one District Judge; and either one justice of the peace, municipal judge or County judge.*
- (a) ~~Three judges~~ appointed by the Supreme Court;
 - (b) Three persons appointed by the Board of Governors

of the Oregon State Bar from among persons admitted to

practice the law in this state; and

- (c) Three persons appointed by the Governor who are qualified under either paragraph (a) or (b) of this section.

(2) The term of a member is six years, but whenever a member ceases to meet the qualifications under which he was

appointed, his membership shall end. Before the expiration of the term of a member, his successor shall be appointed to perform the functions of a member on the day next following expiration of the term of the member. In case of a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for a six-year term.

(3) Appointments by the Governor are subject to confirmation by the Senate by the affirmative vote of two-thirds of the senators voting on the confirmation, a quorum being present. If the appointment is made in the interim between legislative sessions, the Senate shall act pursuant to CRS 171-560.

SECTION 3. Notwithstanding the term specified in Section 2 of this Act, of the members first appointed to the Commission on Judicial Fitness by each appointing authority:

- (1) One shall serve for a term ending June 30, 1972.
- (2) One shall serve for a term ending June 30, 1973.
- (3) One shall serve for a term ending June 30, 1974.

SECTION 4. A member of the Commission on Judicial Fitness shall receive no compensation for his services as a member; but, subject to any other applicable law regulating travel and other expenses for state officers and employees, shall receive his actual and necessary travel and other expenses incurred in the performance of his official duties.

SECTION 5. (1) The Commission on Judicial ~~Business~~ ^{Removal} shall select one of its members as chairman, and another as vice chairman, for such terms and to perform such functions as the commission shall determine.

(2) A majority of the commission constitutes a quorum for the transaction of business. Every recommendation on matters relating to the (~~condemnation, suspension or~~) removal of a judge to the Supreme Court must be concurred in by ~~7~~ ⁷ of the members of the commission.

SECTION 6. (1) Upon complaint from any person concerning the conduct of a judge or upon request of the Supreme Court, and after such investigation as the Commission

on Judicial ~~Business~~ ^{Removal} considers necessary, the commission may:
 (a) ~~make a determination that the complaint or request does not warrant further action of the Commission~~
 (b) ~~Hold a hearing pursuant to subsection (2) of this section, to inquire into the conduct of the judge; or.~~

~~(c) Request the Supreme Court to appoint three qualified persons to act as masters and to report to the commission on the conduct of the judge.~~

(2) The commission shall adopt rules of procedure governing all proceedings under this section. The hearings shall be private unless the judge whose conduct is subject of the hearing requests a public hearing. The judge shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue. Counsel shall have the right to cross-examine witnesses.

~~(3) If masters are appointed, they shall conduct a hearing pursuant to subsection (2) of this section and maintain a record on the matter referred to them.~~

(4) If, after hearing ~~(or after considering the record and report of the masters)~~ the commission finds that the conduct of the judge ^{justifies removal from office} ~~brings the judicial office into disrepute~~, the commission shall recommend to the Supreme Court the ~~(revoke or suspension or)~~ removal of the judge.

~~(5) During the pendency of any proceedings under this section, the Supreme Court by order may disqualify the judge whose conduct is the subject of such proceedings from exercising any judicial function.~~

Section 7. (1) The Supreme Court shall review the record of the proceedings under section 6 of this Act on the law and facts and may receive additional evidence. The Supreme Court ~~(may censure the judge or it)~~ may order the judge ~~(suspended or)~~ removed from office.

~~(2) Upon an order of suspension, the judge shall be suspended from office for the period specified in the order and his salary shall cease, if so ordered, from the date of the order until the end of the specified period. However, suspension does not create a vacancy in the office of judge during the period of suspension.~~

(3) Upon an order for removal, the judge shall be removed from office and his salary shall cease and his office is vacant on the date of such order.

SECTION 8. (1) Papers filed in proceedings under section 6 of this Act are not public records. Papers filed and testimony given in such proceedings are considered privileged communications except in judicial proceedings directly connected with the administration of this Act. The record filed by the Commission on Judicial ~~Witness~~ ^{Removal} with the Supreme Court becomes a public record upon such filing.

(2) Members of the Commission on Judicial ~~Witness~~ ^{Removal}, ~~members appointed pursuant to section 6 of this Act~~ and all subordinates and employees of the commission shall not disclose or use the contents of any records, files, papers or communications filed with or made to any of them in their official capacity for purposes other than those directly connected with the administration of this Act.

SECTION 9. A judge who is a member of the Commission on Judicial ~~Witness~~ ^{Removal} or of the Supreme Court ~~on the acts as a member under section 6 of this Act shall~~ ^{shall} not participate in any proceedings involving his own conduct except in his own defense.

SECTION 10. The Commission on Judicial ~~Witness~~ ^{Removal} may:

(1) Subject to the State Civil Service Law, appoint such subordinates and employees as the commission considers necessary to carry out the duties and powers vested in the commission.

(2) Request the assistance of and compensate expert witnesses and special counsel.

(3) By its chairman or vice chairman, take and

1 preserve testimony and administer oaths to witnesses on any
2 matter within its jurisdiction.

3 (4) Upon majority vote of its members or upon request
4 of the judge whose conduct is subject to a hearing under
5 section 6 of this Act, ~~its chairman~~ its chairman or vice chair-
6 man ^{shall} ~~shall~~ issue any processes necessary to compel the attend-
7 ance of witnesses and the production of any books, papers,
8 records or documents as may be required.

9 (5) The commission shall adopt rules of procedures
10 governing proceedings under section 6 of this Act.

11 SECTION 11. Each witness compelled to attend any
12 proceedings under section 6 of this Act, other than an
13 officer or employee of the state, a public corporation, or
14 a political subdivision, shall receive for his attendance
15 the same fees and mileage allowance allowed by law to a
16 witness in a civil case, payable from funds appropriated to
17 the commission.

18 SECTION 12. Process issued by the commission shall be
19 served by the sheriff of the county where the person to whom
20 it is directed is found, or by any competent person 21 years
21 of age or older who is a resident of this state, in the
22 manner prescribed for the service of a summons upon a de-
23 fendant in a civil proceedings. The process shall be re-
24 turned to the authority issuing it within 10 days after its
25 delivery to the person for service, with proof of service
26 or proof that the person cannot be found. A person other

When an officer making service shall give proof thereof by his affidavit in the same manner as ORS 15.110. When served outside the county in which the process originated, the process may be returned by mail. The person to whom process is delivered shall indorse thereon the date of delivery.

SECTION 15. (1). Whenever a person summoned by the Commission on Judicial ^{Removal} ~~Fitness~~ fails to appear to testify or fails to produce any books, papers, records or documents as required, or whenever any person so summoned refuses to answer any question pertinent to the subject under inquiry before the commission, ~~or the masters or~~ ~~remained pursuant to section 6 of this act;~~ the commission may apply to the circuit court for the county in which the failure occurred for an order to the person to attend and testify, or otherwise to comply with the demand or request of the commission ~~or the masters.~~

(2) The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to comply with the demand or request of the commission within three days after service of the order, or within such further time as the court may grant, or to justify the failure within that time.

(3) The order shall be served upon the person to whom it is directed in the manner required by this state

for the service of process, which service is required to confer jurisdiction upon the court. Failure to obey an order issued by the court under this section is contempt of court.

SECTION 14. Any testimony given by a witness compelled to appear before the Commission on Judicial ^{Removal} ~~Fitne~~ ~~or the masters appointed pursuant to section 6 of this Act~~ shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before the commission or the masters.

~~SECTION 15. (1) For purposes of any retirement benefits to which a judge may be entitled as a judge, during the time any judge is suspended without pay under section 7 of this Act, he shall not be entitled to make any contribution toward such benefits nor shall the state make any contribution on his behalf.~~

~~(2) Any period of time for which a judge is suspended under section 7 of this Act shall be excluded in computing the length of his service. However, suspension of a judge who is a member of the Public Employees' Retirement System under ORS 257.001 to 257.515 does not break the continuity of his membership in the system.~~

Section 15: A judge removed from office under the provisions of this Act who is not entitled to either retire under the provisions of Chapter 1, ORS, or contribute to the Judges' Retirement Fund as authorized by ~~OR~~ ORS 1.318, shall be entitled to receive, without interest, a sum equal to the aggregate deductions from his salary as contributions to the Judges' Retirement Fund as provided by Chapter 1, ORS.

Sec. 16. Any judge removed from office under the provisions of this Act who is eligible for retirement pay under the provisions of Chapter 1, ORS, shall be entitled to such retirement pay as though he had retired voluntarily.