



To: Supreme Court Advisory Committee

From: Judicial Administration Subcommittee

Memorandum

Date: June 14, 2023

Re: June 3, 2023 Referral Letter relating to HB 367 and Conduct of Judicial Candidates

I. Matter referred to subcommittee

Conduct of Judicial Candidates. HB 367 adds Government Code § 33.02105 to authorize the State Commission on Judicial Conduct to accept complaints, conduct investigations, and take disciplinary action against judicial candidates. The Committee should consider whether the Code of Judicial Conduct and the Procedural Rules for the Removal or Retirement of Judges should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

II. Relevant materials

Attached are copies of HB 367, the Code of Judicial Conduct, and the Rules for Removal or Retirement of Judges.

III. Subcommittee recommendation

The Subcommittee recommends (1) revisions to Canon 6(G) of the Code of Judicial Conduct to reflect this statutory provision (see below); and (2) further study of the Procedural Rules for the Removal or Retirement of Judges to determine what revisions may be warranted to provide procedures under which the Commission can address misconduct by judicial candidates.

IV. Discussion

HB 367 implements an amendment to the Texas Constitution approved in 2021 pursuant to HJR 165 (passed during the 87th Legislature). This amendment gave the Commission authority to accept complaints or reports, conduct investigations, and take any other authorized action with respect to a *candidate* for state judicial office. Before this amendment, the Commission was permitted to take such actions only with respect to persons holding a judicial office.

Canon 5 of the Code of Judicial Conduct, entitled “Refraining From Inappropriate Political Activity,” applies to judges and to judicial candidates who are not judges. Although Canon 5 applies to judicial candidates in addition to judges, any violation of Canon 5 by a judicial candidate who was not a judge had to be handled, before the constitutional amendment, by an entity other than the Commission (as set forth in Canon 6). The subcommittee reads HB 367 to add power to the Commission to address conduct by judicial candidates who are not judges; however, the subcommittee does not read HB 367 to remove power from other entities that also are authorized to address conduct by judicial candidates who are not judges (e.g., the State Bar of Texas).

To conform accompanying Canon 6 with the change implemented by HB 367, the following amendment to Canon 6 is recommended. Possible alternative formulations of G(2) are shown below in brackets.

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6(A)(1) shall be subject to the same standards of Canon 5 that are required of member of the judiciary.

(2) Any judge or judicial candidate who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct [subject to investigation and disciplinary action by the Commission] [subject to disciplinary action].

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

(4) The conduct of any other candidate for elective judicial office, not subject to paragraphs ~~(2)~~ and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

The subcommittee recommends further discussion and research as to whether (1) additional amendments to the Code of Judicial Conduct are warranted to implement this change as to judicial candidates who are not judges; and (2) revisions to the Rules for Removal or Retirement of Judges are needed to establish procedures and available sanctions for judicial candidates who are not judges.