

IC 33-38-13

Chapter 13. The Commission on Judicial Qualifications and the Retirement, Discipline, and Removal of Justices and Judges

IC 33-38-13-1

Scope of law

Sec. 1. This chapter applies to all proceedings before the commission on judicial qualifications and masters involving the censure, retirement, or removal of justices of the supreme court and judges of the court of appeals, as provided by Article 7, Section 11 of the Constitution of the State of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-2

"Commission" defined

Sec. 2. As used in this chapter, "commission" means the commission on judicial qualifications described in Article 7, Section 9 of the Constitution of the State of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-3

"Counsel" defined

Sec. 3. As used in this chapter, "counsel" means the lawyer designated by the commission to:

- (1) gather and present evidence before the masters or commission with respect to the charges against a judge; and
- (2) represent the commission before the supreme court in connection with any proceedings before the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-4

"Judge" defined

Sec. 4. As used in this chapter, "judge" means a judge of the court of appeals.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-5

"Mail" defined

Sec. 5. As used in this chapter, "mail" includes ordinary mail or personal delivery.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-6

"Masters" defined

Sec. 6. As used in this chapter, "masters" means the special masters appointed by the chief justice upon request of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-7

"Presiding master" defined

Sec. 7. As used in this chapter, "presiding master" means the master so designated by the chief justice or, in the absence of a designation, the justice or judge named in the order appointing masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-8

Age; temporary judicial duties

Sec. 8. (a) Every justice of the supreme court and judge of the court of appeals shall retire at seventy-five (75) years of age.

(b) Notwithstanding subsection (a), the supreme court may authorize retired justices and judges to perform temporary judicial duties in any state court.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-9

Meeting of commissioners

Sec. 9. (a) The commission shall meet as necessary to discharge its statutory and constitutional responsibilities. Meetings of the commission shall be called in the same manner as prescribed for the judicial nominating commission. Four (4) members of the commission constitute a quorum for the transaction of business.

(b) Meetings of the commission shall be held in Indiana as the chairman of the commission arranges.

(c) The commission may act only at a meeting. The commission may adopt rules and regulations to conduct meetings and discharge its duties.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-10

Papers filed before and after institution of formal proceedings; confidentiality; public inspection

Sec. 10. (a) All papers filed with the commission before the institution of formal proceedings under section 14 of this chapter are confidential unless:

- (1) the justice or judge against whom a recommendation has been filed elects to have the information divulged; or
- (2) the commission elects to answer publicly disseminated statements issued by any complainant.

(b) All papers filed with the commission during and after the institution of formal proceedings are open for public inspection at all reasonable times. Records of commission proceedings are open for public inspection at all reasonable times. After the institution of formal proceedings, all hearings and proceedings before the commission or before the masters appointed under this chapter are open to the public.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-11

Privileged information

Sec. 11. Filing papers with and giving testimony before the commission or the masters appointed by the supreme court under this chapter are privileged.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-12**Complaint**

Sec. 12. (a) A complaint filed with the commission must be in writing and directed to the commission or to any member of the commission.

(b) A specified form of complaint may not be required.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-13**Complaint; investigation**

Sec. 13. (a) Any Indiana citizen may complain to the commission about the activities, fitness, or qualifications of a judge or justice. Upon receiving a complaint, the commission shall determine if the complaint is founded and not frivolous. If the commission determines that the complaint is frivolous or malicious, the commission shall file with the proper court charges against the complainant. The commission, without receiving a complaint, may conduct an initial inquiry on its own motion.

(b) If the commission determines it is necessary to investigate a justice or judge, the commission shall notify the justice or judge by prepaid registered or certified mail addressed to the justice or judge at the justice's or judge's chambers and last known residence. The notice must contain information concerning the following:

- (1) The investigation.
- (2) The nature of the complaint.
- (3) The origin of the complaint, including the name of the complainant or that the investigation is on the commission's motion.
- (4) The opportunity to present matters as the justice or judge may choose.

If the investigation does not disclose sufficient cause to warrant further proceedings the justice or judge shall be so notified.

(c) The commission may do the following:

- (1) Make investigations or employ special investigators.
- (2) Hold confidential hearings with the complainant or the complainant's agents or attorneys.
- (3) Hold confidential hearings with the judge or justice involved in the complaint.

(d) If:

- (1) the commission's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings; and
- (2) the complainant issues a public statement relating to the activities or actions of the commission;

the commission may answer the statement by referring to the record

of its proceedings or the results of its investigation.
As added by P.L.98-2004, SEC.17.

IC 33-38-13-14

Notice of formal proceedings

Sec. 14. (a) If the commission concludes, after investigation, to institute formal proceedings against a justice or judge, the commission shall give written notice of the proceedings to the justice or judge by registered or certified mail addressed to the judge at the judge's chambers and last known residence. The proceedings must be entitled:

"BEFORE THE INDIANA JUDICIAL
QUALIFICATIONS COMMISSION
Inquiry Concerning a (Justice) Judge, No. _____".

(b) The notice must:

- (1) be issued in the name of the commission;
- (2) specify in ordinary and concise language the charges against the justice or judge and the alleged facts upon which the charges are based; and
- (3) advise the justice or judge of the justice's or judge's right to file a written answer to the charges not more than twenty (20) days after service of the notice.

A charge is not sufficient if it merely recites the general language of the original complaint, but must specify the facts relied upon to support a particular charge.

(c) A copy of the notice shall be filed in the office of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-15

Answer

Sec. 15. Not more than twenty (20) days after service of the notice of formal proceedings, the justice or judge:

- (1) may file with the commission a signed original and one (1) copy of an answer; and
- (2) shall mail a copy of the answer to the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-16

Setting for hearing before commission or masters

Sec. 16. (a) Upon the filing of or the expiration of time for filing an answer, the commission shall:

- (1) hold a hearing concerning the discipline, retirement, or removal of the justice or judge; or
- (2) request the supreme court to appoint three (3) active or retired justices or judges of courts of record as special masters to hear and take evidence and report to the commission.

(b) The commission shall:

- (1) set a date, time, and place for a hearing under subsection (a); and

(2) give notice of the hearing by registered or certified mail to the justice or judge, the masters, and the counsel not less than twenty (20) days before the date of the hearing.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-17

Hearing

Sec. 17. (a) The commission or a master may proceed with a scheduled hearing whether or not the judge files an answer or appears at the hearing.

(b) The failure of a justice or judge to answer or appear at the hearing may not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, retirement, or removal. In a proceeding for involuntary retirement for disability, the failure of a justice or judge to testify in the justice's or judge's behalf or to submit to a medical examination requested by the commission or the masters may be considered, unless the failure was due to circumstances beyond the justice's or judge's control.

(c) The hearing shall be reported verbatim.

(d) At least four (4) commission members must be present when evidence is produced at a hearing before the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-18

Evidence

Sec. 18. The Indiana Rules of Evidence apply at a hearing before the commission or the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-19

Rights of judge; proceedings; notice; incapacity

Sec. 19. (a) In formal proceedings involving a justice's or judge's discipline, retirement, or removal, the justice or judge may do the following:

- (1) Defend against the charges by introducing evidence.
- (2) Be represented by counsel.
- (3) Examine and cross-examine witnesses.
- (4) Issue subpoenas for attendance of witnesses to testify or produce evidentiary matter under section 31 of this chapter.

(b) The commission shall transcribe the testimony and provide a copy at no cost to the justice or judge. The justice or judge is entitled to have any part of the testimony transcribed at the justice's or judge's expense.

(c) Except as otherwise provided in this chapter, notice or any other matter shall be sent to a justice or judge by registered or certified mail to the justice or judge at the justice's or judge's office and residence unless the justice or judge requests otherwise in writing. A copy of the notice or other matter must be mailed to the justice's or judge's attorney of record.

(d) If a justice or judge has been adjudged incapacitated under

IC 29-3, the justice's or judge's guardian may claim and exercise any right and privilege and make any defense for the justice or judge with the same force and effect as if claimed, exercised, or made by the justice or judge if competent. If the rules provide for serving or giving notice or sending any matter to the justice or judge, a copy of any notice or other matter sent to the justice or judge also shall be served, given, or sent to the justice's or judge's guardian.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-20

Amendments to notice or answer

Sec. 20. The masters, at any time before the conclusion of the hearing, or the commission, at any time before its determination:

- (1) may allow or require amendments to the notice of formal proceedings; and
- (2) may allow amendments to the answer.

The notice may be amended to conform to proof or to set forth additional facts whether occurring before or after the commencement of the hearing. If an amendment is made, the justice or judge shall be given reasonable time both to answer the amendment and to prepare and present a defense.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-21

Report of masters

Sec. 21. (a) After a hearing, the masters shall promptly prepare and transmit to the commission an original and four (4) copies of a transcript of the hearing and an original and four (4) copies of a report that contains a brief statement of the proceedings and the masters' recommended findings of fact. The recommended findings of facts are not binding upon the commission.

(b) Upon receiving the report of the masters, the commission shall mail a copy of the report and transcript to the justice or judge and the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-22

Objections to report of masters

Sec. 22. Not more than fifteen (15) days after the commission mails a copy of the report of the masters to the justice or judge, the counsel or the justice or judge may file with the commission an original and one (1) copy of objections to the report of masters. If the counsel files objections, the counsel shall mail a copy of the objections to the justice or judge. If the justice or judge files objections, the justice or judge shall send a copy of the objections by registered or certified mail to the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-23

Appearance before commission

Sec. 23. If objections to a report of the masters under section 21 of this chapter are not timely filed, the commission may adopt the recommended findings of the masters without a hearing. If objections are timely filed, or if objections are not timely filed and the commission proposes to modify or reject the recommended findings of the masters, the commission shall give the justice or judge and the counsel an opportunity to be heard before the commission in the county in which the justice or judge resides. The commission shall mail written notice of the time and place of the hearing to the justice or judge and the counsel not less than ten (10) days before the hearing.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-24

Extension of time

Sec. 24. (a) The chairman of the commission may extend the time for:

- (1) filing an answer;
- (2) conducting a hearing before the commission; and
- (3) filing objections to the report of the masters.

(b) The presiding master may, with the approval of the chairman of the commission, extend the time for conducting a hearing before the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-25

Hearings; additional evidence

Sec. 25. The commission may order a hearing to take additional evidence at any time while a matter is pending before it. The hearing must be in the county in which the justice or judge resides. The order must set the time and place of the hearing and shall indicate the matters on which evidence will be taken. The commission shall send a copy of the order to the judge and the counsel not less than ten (10) days before the hearing. If masters have been appointed, the hearing shall be before the masters, and the hearing must conform with sections 18 through 24 of this chapter and this section.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-26

Vote or recommendation for censure, retirement, or removal

Sec. 26. If the commission finds good cause, it shall recommend to the supreme court the censure, retirement, or removal of a justice or judge. If a hearing is before the masters, the affirmative vote of four (4) members of the commission is required to recommend censure, retirement, or removal of a justice or judge. If a hearing is before the commission, the affirmative vote of four (4) members of the commission, including a majority of the members who were present at the hearing, is required to recommend censure, retirement, or removal of a justice or judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-27

Record of commission proceedings

Sec. 27. The commission shall keep a record of all formal proceedings concerning a judge. The commission shall record its determination and mail notice of the determination to the justice or judge and the counsel. If the commission recommends censure, retirement, or removal, the commission shall prepare a transcript of the evidence and proceedings and shall make written findings of fact and conclusions of law.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-28

Certification of commission recommendation to supreme court

Sec. 28. Upon recommending the censure, retirement, or removal of a justice or judge, the commission shall promptly file the following with the clerk of the supreme court:

- (1) A copy of the recommendation certified by the chairman or secretary of the commission.
- (2) A transcript of the evidence.
- (3) Findings of fact and conclusions of law.

The commission shall promptly mail to the justice or judge and the counsel notice of the filing and copies of the filed documents.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-29

Petition for modification or rejection of commission's recommendation

Sec. 29. (a) Not more than thirty (30) days after a certified copy of the commission's recommendation is filed with the clerk of the supreme court, a justice or judge may petition the supreme court to modify or reject the commission's recommendation.

(b) The justice or judge shall verify the petition. The petition must be based on the record. The petition must specify the grounds relied on and must be accompanied by the petitioner's brief and proof of service of two (2) copies of the petition and brief on the commission and one (1) copy of the petition and brief on the counsel.

(c) Not more than twenty (20) days after service of the petitioner's brief, the commission shall file a respondent's brief and serve a copy on the justice or judge. Not more than twenty (20) days after service of respondent's brief, the petitioner may file a reply brief and shall serve two (2) copies on the commission and one (1) copy on the counsel.

(d) Failure to timely file a petition is considered consent to the determination on the merits based upon the record filed by the commission.

(e) To the extent necessary and not inconsistent with this section, the Indiana Rules of Appellate Procedure apply to reviews by the supreme court of commission proceedings.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-30

Jurisdiction and powers

Sec. 30. The commission has jurisdiction and powers necessary to conduct the proper and speedy disposition of any investigation or hearing, including the powers to depose witnesses and to order the production of documentary evidence. A member of the commission or a master may administer oaths to witnesses in a matter under the commission's jurisdiction.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-31

Subpoenas

Sec. 31. (a) A master may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the masters. The master shall serve the subpoena in the manner provided by law.

(b) The chairman of the commission may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the commission in which masters have not been appointed. The chairman shall serve the subpoena in the manner provided by law.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-32

Enforcement of subpoena

Sec. 32. If a witness in a commission proceeding:

- (1) fails or refuses to attend upon subpoena; or
- (2) refuses to testify or produce documentary evidence demanded by subpoena;

a circuit court may enforce the subpoena.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-33

Filing papers and pleadings

Sec. 33. All papers and pleadings filed with the office of the chairman of the commission are considered to have been filed with the commission.

As added by P.L.98-2004, SEC.17. Amended by P.L.2-2005, SEC.111.

IC 33-38-13-34

Discovery; admissibility of evidence; demand for formal proceeding or finding

Sec. 34. (a) In all formal proceedings, discovery is available to the commission and the judge or justice under the Indiana Rules of Civil Procedure. A motion requesting a discovery order must be made to

the circuit court judge in the county in which the commission hearing is held.

(b) In all formal proceedings, the counsel shall provide the following to the judge or justice at least twenty (20) days before the hearing:

- (1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing.
- (2) Copies of all written statements and transcripts of testimony of witnesses described in subdivision (1) that:
 - (A) are in the possession of the counsel or the commission;
 - (B) are relevant to the hearing; and
 - (C) have not previously been provided to the justice or judge.
- (3) Copies of all documentary evidence that the counsel expects to offer in evidence at the hearing.

(c) Upon objection of the justice or judge, the following are not admissible in a hearing:

- (1) The testimony of a witness whose name and address have not been furnished to the judge or justice under subsection (b).
- (2) Documentary evidence that has not been furnished to the judge or justice under subsection (b).

(d) After formal proceedings have been instituted, the justice or judge may request in writing that the counsel furnish to the justice or judge the names and addresses of all witnesses known at any time to the counsel who have information that may be relevant to a charge against or a defense of the justice or judge. The counsel shall provide to the justice or judge copies of documentary evidence that:

- (1) are known at any time to the counsel or in the possession at any time of the counsel or the commission;
- (2) are relevant to a charge against or defense of the justice or judge; and
- (3) have not previously been provided to the justice or judge.

The counsel shall comply with a request under this subsection not more than ten (10) days after receiving the request and not more than ten (10) days after the counsel becomes aware of the information or evidence.

(e) During the course of an investigation by the commission, the justice or judge whose conduct is being investigated may demand in writing that the commission:

- (1) institute formal proceedings against the justice or judge; or
- (2) enter a formal finding that there is not probable cause to believe that the justice or judge is guilty of any misconduct.

The commission shall comply with a request under this subsection not more than sixty (60) days after receiving the request. A copy of the request shall be filed with the supreme court. If the commission finds that there is not probable cause, the commission shall file the finding with the supreme court. A document filed with the supreme court under this subsection is a matter of public record.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-35

Exclusion

Sec. 35. This chapter does not encroach upon or impair the vested rights of a justice or judge or the surviving spouse of a justice or judge under any constitutional or statutory retirement program.

As added by P.L.98-2004, SEC.17.