



National Forum On Judicial Accountability (NFOJA)
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Proposed Model State Legislation ▪ For Discussion Purposes Only ▪ Draft Date 8/8/2009

A PROPOSED STATE BILL

SYNOPSIS

Hereby proposed is the Citizens’ Panel on Judicial Misconduct (Citizens’ Panel) which shall have original and exclusive jurisdiction over judicial discipline, replacing any and all judicial disciplinary authority of this State, not including the Legislature’s power to impeach; further upon enactment and the effective date of this proposed Act, any and all other state judicial disciplinary agencies or authorities shall cease to exist, with all funding otherwise allocated to it or them being shifted to the Citizens’ Panel.

The Citizens’ Panel shall have original and exclusive jurisdiction over discipline imposed for judicial misconduct as defined herein. It shall have original and concurrent jurisdiction to indict a judge of this State for violation of one or more state criminal statutes in his or her judicial capacity.

The Citizens’ Panel is an agency of the legislative branch operating independently in its various functions.

The Citizens’ Panel shall have three major functions as exercised by its Screening Panel, Pre-Trial and Indictment Panel, as well as Trial and Judicial Discipline Panel. The Screening Panel shall dismiss any and all complaints before the Citizens’ Panel that fail to allege a cognizable claim of judicial misconduct, referring all others for consideration and appropriate disposition by the Pre-Trial and Indictment Panel.

Upon finding probable cause to believe a respondent judge violated one or more state criminal statutes in his or her judicial capacity, the Pre-Trial and Indictment Panel of the Citizen’s Panel shall indict that judge for said crime(s). In the event the Pre-Trial and Indictment Panel finds probable cause that a respondent judge violated one or more federal criminal statutes, it shall issue a written finding to that effect and notify through the Administrator, appropriate U. S. Attorneys and/or the appropriate U. S. Assistant Attorneys General. Further the Pre-Trial and Indictment Panel shall preside over pre-trial proceedings for all allegations of judicial misconduct pending before it in anticipation of trial and possible imposition of judicial discipline.

The Trial and Judicial Discipline Panel of the Citizens’ Panel has authority to try cases of alleged judicial misconduct as defined herein, imposing discipline when appropriate.

THE CITIZENS’ PANEL ON JUDICIAL MISCONDUCT ACT

An Act relating to investigation of alleged judicial misconduct as defined herein, indictment and discipline of judges for such misconduct, as well as creation of the Citizens’ Panel on Judicial



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1 Misconduct (Citizens’ Panel) which shall be the sole judicial disciplinary body of this State,
2 functioning independently as an agency of the Legislature.

3
4 This Bill shall become effective when enacted into law as provided by state constitution and applicable
5 statutes.

6
7 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

- 8
9 (a) SHORT TITLE – This Act shall be cited as the Citizens’ Panel on Judicial Misconduct Act.
10 (b) TABLE OF CONTENTS – The table of contents of this Act is as follows:

11
12 Sec. 1. Short title; table of contents.

13
14 **TITLE I – GENERAL PROVISIONS**

- 15
16 Sec. 101. Definitions.
17 Sec. 102. Creation and Defined Function of the Citizens’ Panel On Judicial Misconduct.

18
19 **TITLE II – ADMINISTRATION**

- 20
21 Sec. 201. Administrative Structure.
22 Sec. 202. Funding, Budget, and Related Reporting.
23 Sec. 203. Panel Selection, Eligibility, Training, Assignment, Term of Service, and Compensation.
24 Sec. 204. Exemption and Excuse from Service.

25
26 **TITLE III – COMPLAINT PROCEDURE**

- 27
28 Sec. 301. Purpose and Notice of the Complaint Process.
29 Sec. 302. Standing and Time Limits for Filing.

30
31 **TITLE IV – MAINTAINING PANEL AND SUBPANEL SECRECY AND INDEPENDENCE**

- 32
33 Sec. 401. The Screening Panel.
34 Sec. 402. The Pre-Trial and Indictment Panel.
35 Sec. 403. The Trial and Judicial Discipline Panel.

36
37 **TITLE V – RIGHTS OF THE PARTIES**

- 38
39 Sec. 501. Rights to Counsel.
40 Sec. 502. Rights Accorded By State and U.S. Constitution.
41 Sec. 503. Rehearing and Appeal.

42
43 **TITLE VI – REACHING ACCORD AND IMPOSING SANCTIONS**



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- 1 Sec. 601. Reaching Accord.
- 2 Sec. 602. Sanctions.

TITLE VII – SEVERABILITY PROVISION

- 6 Sec. 701. Severability Provision.

TITLE I – GENERAL PROVISIONS

SEC. 101. DEFINITIONS.

- 12 a. “Judges of this State” include and refer to its former and currently sitting trial and appellate judges and justices, magistrates, referees, special judges, judges pro-tem, and the like who preside over pre-trial and/or trial of cases and controversies, post-trial motions, and/or appeals.
- 16 b. “Courts of this State” include and refer to its trial courts whether they be circuit or superior, county, city, municipal, town, township, village, or any subdivision of the State as well as courts of special jurisdiction functioning as sections or divisions of the foregoing or with an independent basis of jurisdiction such as tax courts. “Courts of this State” also include and refer to its courts of appellate jurisdiction whether statewide, a lesser geographic area, or overflow jurisdiction. Administrative agencies are excluded.
- 23 c. “Judicial misconduct” includes and refers to one or more violations by a judge of this State, in his or her judicial capacity, of any effective code of judicial conduct, judicial canon, state code of ethics, common law judicial obligation, oath of office, criminal statute, and/or other proscribed act applicable to judges of this State within the meaning of this Act.
- 28 d. “Judicial discipline” includes and refers to one or more sanctions imposed by the Trial and Judicial Discipline Panel of the Citizens’ Panel pursuant to Title VI, Sec. 602 of this Act, upon a finding that the respondent judge is guilty of an act or acts of judicial misconduct.

SEC. 102. CREATION AND DEFINED FUNCTION OF THE CITIZENS’ PANEL ON JUDICIAL MISCONDUCT.

- 35 a. Hereby created is the Citizens’ Panel on Judicial Misconduct (Citizens’ Panel) which shall be the sole judicial disciplinary body of this State. Upon the effective date of this Act, any and all other judicial disciplinary agencies of this State shall cease to exist; cases pending before them shall be transferred for resolution to the Citizens’ Panel, and any funding allocated to such judicial disciplinary agencies shall be assigned and appropriately transferred to the Citizens’ Panel.
- 41 b. The Citizens’ Panel shall have original and exclusive jurisdiction over discipline imposed for judicial misconduct as defined herein. It shall have original and concurrent jurisdiction to indict a judge



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1 of this State for violation of one or more state criminal statutes in his or her judicial capacity.

2
3 c. The Citizens’ Panel is an agency of the legislative branch operating independently in its various
4 functions.

5
6 d. The Citizens’ Panel shall have three major functions as exercised by its Screening Panel, Pre-
7 Trial and Indictment Panel, as well as Trial and Judicial Discipline Panel.

8
9 1. The Screening Panel shall dismiss any and all complaints before the Citizens’ Panel,
10 failing to allege a cognizable claim of judicial misconduct, referring all others for consideration and
11 appropriate disposition by the Pre-Trial and Indictment Panel. Judicial misconduct complaints shall be
12 liberally construed so as not to preclude those having substance but inartfully pleaded.

13
14 2. Upon finding probable cause to believe a respondent judge violated one or more state
15 criminal statutes in his or her judicial capacity, the Pre-Trial and Indictment Panel of the Citizen’s Panel
16 shall indict that judge for said crime(s). In the event the Pre-Trial and Indictment Panel finds probable
17 cause that a respondent judge violated one or more federal criminal statutes, it shall issue a written
18 finding to that effect and notify through the Administrator, appropriate U. S. Attorneys and/or the
19 appropriate U. S. Assistant Attorneys General. The Pre-Trial and Indictment Panel shall preside over
20 pre-trial proceedings for all allegations of judicial misconduct pending before it in anticipation of trial
21 and possible imposition of judicial discipline.

22
23 3. The Trial and Judicial Discipline Panel of the Citizens’ Panel has authority to try cases of
24 alleged judicial misconduct as defined herein, imposing discipline when appropriate.

25
26 **TITLE II – ADMINISTRATION**

27
28 **SEC. 201. ADMINISTRATIVE STRUCTURE.**

29
30 a. Administration of the Citizens’ Panel shall consist of an Administrator appointed by a majority
31 vote of the Governor, majority and minority leader of the House and Senate, and respective Chairperson
32 as well as senior or ranking minority member of both the House and Senate Judiciary Committees. Said
33 Administrator shall be appointed for a five year term with a maximum of two terms. Serving him or her
34 shall be an Assistant Administrator, at least one secretary, staff attorneys as needed to advise the
35 Citizens’ Panel in its various functions, investigators and experts as needed, and Public Defenders
36 available to prosecute complaints on behalf of indigent complainants.

37
38 **SEC. 202. FUNDING, BUDGET, AND RELATED REPORTING.**

39
40 a. The Citizens’ Panel shall function as an independent agency of the Legislature which after
41 transfer of funding to it from the agency’s predecessor(s), shall provide funding for its operation and
42 management so as to carry out the purposes of this Act.



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1
2 b. The Administrator shall notify the Chairperson of both the House and Senate Judiciary
3 Committees of expenditures by the Citizens' Panel, its financial needs, and shall furnish other
4 information essential to formulating a related budget.

5
6 c. The Citizens' Panel through its Administrator and to the extent practicable shall report on its
7 activities to the Chairperson of the House and Senate Judiciary Committees when the Legislature is in
8 session and shall provide an annual report to the Governor as well as the entire House and Senate.

9
10 **SEC. 203. PANEL SELECTION, ELIGIBILITY, TRAINING, ASSIGNMENT, TERM OF**
11 **SERVICE, AND COMPENSATION.**

12
13 a. The Citizens' Panel shall be composed of at least twenty-one randomly selected people meeting
14 eligibility requirements prescribed herein. Panelists shall be selected at random from voters registration
15 lists.

16
17 b. To be eligible for selection, prospective members of the Citizens' Panel must be natural born
18 American citizens or naturalized citizens for more than five years; at least thirty (30) years of age; able
19 to read, write, and understand English; and physically as well as mentally capable of rendering
20 satisfactory service. Further said prospective panelists cannot have been convicted of any crime
21 punishable by imprisonment for over one year and/or involving moral turpitude such as child
22 molestation, perjury, fraud, etc.

23
24 c. Promptly after being selected but prior to being sworn to office, all members of the Citizens'
25 Panel shall undergo at least a 32 hour training program on the legal terminology they are likely to
26 encounter while serving; basic court structure and procedure as well as corresponding judicial duties;
27 various canons, codes, and substantive law they are generally required to enforce; their basic duties and
28 functions; and the basic duties, functions, as well as standard operating procedures of their subpanels, ie.
29 the Screening Panel, Pre-Trial and Indictment Panel, and Trial and Judicial Discipline Panel of the
30 Citizens' Panel.

31
32 d. Assignment whether to the Screening Panel, Pre-Trial and Indictment Panel, and/or Trial and
33 Judicial Discipline Panel, shall be random except in the accommodation of members' terms of service.

34
35 e. While his or her service may be intermittent, in no event shall any panelist serve more than six
36 consecutive calendar months on the Citizens' Panel during any five (5) consecutive year period.

37
38 f. Each member of the Citizens' Panel shall be reasonably compensated for his or her service
39 through a uniform per diem payment supplemented by a variable mileage allowance and provision for
40 incidental expense such as parking and/or overnight lodging fees if any, and meals if not directly
41 provided.

42
43 **SEC. 204. EXEMPTION AND EXCUSE FROM SERVICE.**



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1
2 Service on the Citizens’ Panel shall be considered a duty of state citizenship in the same way that jury
3 service is a duty of state citizenship.

4
5 a. The following are exempt from and ineligible for service on the Citizens’ Panel:

- 6
- 7 1. current and former judges, justices, and both public as well as private sector attorneys;
- 8 2. full-time employees of local, county, state, and federal government as well as elected and
- 9 appointed government officials.

10
11 b. The following are excused from service on the Citizens’ Panel:

- 12
- 13 1. those over 70 years of age or shortly to be 70 and requesting to be excused;
- 14 2. those having a current doctor’s certificate stating they are unable to serve for specific
- 15 reason(s) stated;
- 16 3. those on active duty in the Armed Forces of the United States, or who are enlisted and
- 17 will be called to duty under a delayed enlistment plan within six months, or who will be
- 18 activated from the National Guard or Reserve within six months;
- 19 4. those who have served as a state or federal grand or trial juror, civil or criminal, within
- 20 two years of their prospective service on the Citizens’ Panel;
- 21 5. those who directly care for one or more children under the age of ten and/or aged, infirm,
- 22 or elderly person(s) whose health and/or safety would be jeopardized by their absence;
- 23 6. the sole owner or proprietor of a small business with no employees or very few
- 24 employees where service and his or her corresponding absence would cause the business
- 25 to close or face the prospect of financial ruin;
- 26 7. volunteer firefighters, rescue squad or ambulance squad members, and auxiliary police in
- 27 departments that are short handed or are often called to duty;
- 28 8. key hospital emergency room personnel, other specialized medical professionals
- 29 similarly situated, and others who cannot be spared for reasons of public health and
- 30 safety;
- 31 9. citizens who are non-resident domiciliaries;
- 32 10. those who would be unduly burdened by related travel;
- 33 11. those who otherwise make a showing of substantial hardship;

34
35 c. The Administrator may limit the term of service for key personnel not qualifying for the
36 foregoing exemptions but whose extended absence would likely cause financial or other hardship for an
37 enterprise, non-profit, or business; except that he or she must serve at least ten consecutive business
38 days.

39
40 **TITLE III – COMPLAINT PROCEDURE**

41
42 **SEC. 301. PURPOSE AND NOTICE OF THE COMPLAINT PROCESS.**



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1
2 a. The purpose of this complaint process is to deter judicial misconduct, criminal and otherwise;
3 initiate and impose discipline for that misconduct by judges of this State; and prompt indictments when
4 the misconduct constitutes one or more state crimes. This process further provides the citizens of this
5 State a forum for addressing related allegations that do not rely almost exclusively for effectiveness on
6 judicial integrity and/or that of lawyers and/or public officials whose power and/or careers are controlled
7 or substantially impacted by judges. This is not to suggest that judges, lawyers, and public officials
8 whose power and/or careers are controlled or substantially impacted by judges are not generally honest
9 people of great integrity. This Act instead decries a judiciary that is essentially final arbiter of whether it
10 has been corrupted and exclusive regulator of any attorney or judge who would object.

11
12 b. In no event shall this process duplicate or overlap functions of an appellate court, provide post-
13 trial relief, and/or alter any final judgment or similar action of any court.

14
15 c. Information on how and where to file a complaint before the Citizens' Panel shall be made
16 conspicuous and available at every courthouse in the State. Said information shall be provided to every
17 litigant or claimant and attorney of record upon the corresponding filing of a case in a court of this State
18 and to every defendant or respondent at such time that a corresponding complaint and summons are
19 served. Said information shall also be provided to all parties to an appeal and their attorneys of record at
20 the time said appeal is filed.

21
22 d. The Citizens' Panel shall make a standard form of complaint available for the general public
23 which states its purpose and the kind of evidence that should be submitted for its consideration to the
24 extent reasonably available.

25
26 e. The Citizens' Panel shall make available for the general public, preferably but not necessarily
27 free, a copy of any and all code(s) of judicial conduct, judicial canon(s), state code(s) of ethics, common
28 law judicial obligation(s), oath(s) of office, highly relevant criminal statute(s), and other highly relevant
29 proscriptions applicable to judges of this State.

30
31 **SEC. 302. STANDING AND TIME LIMITS FOR FILING.**

32
33 a. Any litigant, attorney, law firm, and/or party adversely affected, someone acting on their behalf
34 or simply having knowledge of judicial misconduct as herein defined, may make a complaint.

35
36 b. Upon the effective date of this Act, the time limit for filing a subsequent related complaint is 120
37 days after the alleged judicial misconduct occurred or was reasonably discovered. In the event of
38 alleged judicial misconduct before establishment of the Citizens' Panel, the time period for filing a
39 related complaint in cases never submitted to any previously constituted judicial disciplinary agency
40 shall be a reasonable time after the alleged misconduct occurred or was reasonably discovered.

41



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1 **TITLE IV – MAINTAINING PANEL AND SUBPANEL SECRECY**
2 **AND INDEPENDENCE**

3
4 **SEC. 401. THE SCREENING PANEL.**

5
6 a. The Screening Panel shall meet in secret closed room session with no one else present when
7 considering whether any complaint before the Citizens’ Panel has sufficient merit to proceed to its Pre-
8 Trial and Indictment Panel. Screening Panel members may go outside the subpanel’s deliberation room
9 to ask questions of their staff attorney(s), but in no event shall any one or more subpanel members
10 request the opinion of a nonmember as to whether a matter should be dismissed or proceed to the pre-
11 trial / indictment stage.

12
13 b. A minimum of five out of seven Screening Panel members may dismiss any matter before the
14 Citizens’ Panel or have it proceed to the pre-trial / indictment stage. Any such decision is final and
15 cannot be appealed. As the jurisdiction of the Citizens’ Panel is original and exclusive with no court
16 having appellate jurisdiction over it, no court can overturn such a finding.

17
18 **SEC. 402. THE PRE-TRIAL AND INDICTMENT PANEL.**

19
20 a. Following a self-executing pre-trial and discovery process to the extent possible, the Pre-Trial
21 and Indictment Panel shall meet in secret closed room session with no one else present when considering
22 whether any case before the Citizens’ Panel warrants an indictment and otherwise merits trial. Pre-Trial
23 and Indictment Panel members may go outside the subpanel’s deliberation room to ask questions of their
24 staff attorney(s), but in no event shall any one or more subpanel members request the opinion of a
25 nonmember as to whether a matter should prompt an indictment, be dismissed, or proceed to trial.

26
27 b. A minimum of five out of seven Pre-Trial and Indictment Panel members may indict based upon
28 or dismiss any matter submitted to it by the Screening Panel of the Citizens’ Panel, or have it proceed to
29 trial. Any such decision is final and cannot be appealed. As the jurisdiction of the Citizens’ Panel is
30 original and exclusive, no court can overturn such a finding.

31
32 c. Pre-trial and discovery before the Pre-Trial and Indictment Panel shall be conducted in accord
33 with prevailing rules of civil procedure except the subpanel itself may simultaneously explore related
34 matters through its own investigator(s) and expert(s). One or more subpanel members shall consider and
35 resolve related motions, requests, and similar matters with the advice of one or more staff attorneys. A
36 minimum of five out of seven subpanel members shall be necessary for a finding of contempt.

37
38 **SEC. 403. THE TRIAL AND JUDICIAL DISCIPLINE PANEL.**

39
40 a. As far as possible, trial before the Trial and Judicial Discipline Panel of the Citizens’ Panel shall
41 conform to prevailing rules of civil procedure and rules of evidence. At least seven members of the



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1 Citizens' Panel shall try all matters submitted to it by the Pre-Trial and Indictment Panel of the Citizens'
2 Panel, except that a staff attorney shall resolve any and all trial as well as post-trial motions.

3
4 b. Upon conclusion of trial, there shall be a reading of the alleged instances of judicial misconduct
5 by the Trial and Judicial Discipline Panel which shall be followed by the subpanelists' questions if any
6 to be answered by the presiding staff attorney. Said staff attorney shall not offer an opinion as to the
7 guilt or innocence of any accused judge.

8
9 c. The Trial and Judicial Discipline Panel shall be instructed that the complainant must prove his,
10 her, and/or its case by clear and convincing evidence upon being provided standard instructions setting
11 forth the essential elements of all alleged judicial misconduct. The Trial Panel shall then retire into
12 closed room deliberation where at least six out of seven of them shall determine whether the respondent
13 judge is guilty or not guilty of the misconduct charged. Any and all admissible evidence shall be
14 available during deliberation. Each subpanelist shall make up his or her own mind as to guilt or
15 innocence and should not be unduly swayed by but appropriately consider the opinions of others. Upon
16 reaching a decision by the required majority vote, the panelists shall so state, announce their decision,
17 and be polled by the presiding staff attorney.

18
19 **TITLE V – RIGHTS OF THE PARTIES**

20
21 **SEC. 501. RIGHTS TO COUNSEL.**

22
23 a. The complainant has the right to counsel of his, her, and/or its own choosing and expense, self-
24 representation as to natural persons, and/or representation by a nonlawyer advocate. Public Defenders
25 shall be made available to prosecute complaints on behalf of indigent complainants.

26
27 b. Upon a finding by the Screening Panel that a complaint warrants submission to the Pre-Trial and
28 Indictment Panel of the Citizens' Panel, a respondent judge has a right to be represented by the Attorney
29 General and/or one or more of his or her Assistant Attorneys General. Otherwise the respondent judge
30 has the right to counsel of his or her own choosing and at his or her expense, self-representation, and/or
31 representation by a nonlawyer advocate.

32
33 **SEC. 502. RIGHTS ACCORDED BY STATE AND U.S. CONSTITUTION.**

34
35 All complainants and respondent judges shall enjoy the rights accorded them by the Constitution of this
36 State and the U.S. Constitution. All hearings and trials shall be open to the public and media.

37
38 **SEC. 503. REHEARING AND APPEAL.**

39
40 a. Any and all judges found guilty of any charge before the Citizens' Panel have ten consecutive
41 days immediately after that finding to request a rehearing. The rehearing shall be before the same trial
42 panel that heard the case.

