

FEB 23 1993

Passed House

HOUSE FILE 301

BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

Substituted for SF 171 4-6-93 (1022)
(SUCCESSOR TO HSB 72)

Passed House, Date ^(P. 498) 3-4-93 Passed Senate, Date 4-6-93
Vote: Ayes 96 Nays 0 Vote: Ayes 48 Nays 0
Approved May 3, 1993
Repassed 94/100 4-21-93
^(P. 1518) A BILL FOR

1 An Act relating to judicial ethics or grievance hearings and
2 examination and admissions subject to the administrative
3 authority of the supreme court.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5

HOUSE FILE 301

H-3744

2 follows:

3 1. Page 2, by inserting after line 28, the

4 following:

5 "Sec ____ . Section 602.10123, Code 1993, is amended

6 to read as follows:

7 602.10123 PROCEEDINGS.

8 The proceedings to remove or suspend an attorney
9 may be commenced by the direction of the court or on
10 ~~motion~~ the petition of any individual. In the former
11 case, the court must direct some attorney to draw up
12 the accusation; in the latter, the accusation must be
13 drawn up and sworn to by the person making it."

14 2. By numbering and renumbering as necessary.

RECEIVED FROM THE SENATE

H-3744 FILED APRIL 6, 1993

House Concurred 4/21/93 (P. 1517)

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HF 301

1 Section 1. Section 602.2104, subsection 2, Code 1993, is
2 amended to read as follows:

3 2. In case of a hearing before the commission, written
4 notice of the charge and of the time and place of hearing
5 shall be mailed to a judicial officer or an employee of the
6 judicial department at the person's residence at least twenty
7 days prior to the time set for hearing. Hearing shall be held
8 in the county where the judicial officer or employee of the
9 judicial department resides unless the commission and the
10 judicial officer or employee of the judicial department agree
11 to a different location. The judicial officer shall continue
12 to perform judicial duties during the pendency of the charge
13 and the employee shall continue to perform the employee's
14 assigned duties, unless otherwise ordered by the commission.
15 ~~The commission has subpoena power on behalf of the state and~~
16 ~~the judicial officer or employee of the judicial department.~~
17 ~~Disobedience of the commission's subpoena is punishable as~~
18 ~~contempt in the district court for the county in which the~~
19 ~~proceeding is held.~~ The attorney general shall prosecute the
20 charge before the commission on behalf of the state. A
21 judicial officer or employee of the judicial department may
22 defend and has the right to participate in person and by
23 counsel, to cross-examine, to be confronted by the witnesses,
24 and to present evidence in accordance with the rules of civil
25 procedure. A complete record shall be made of the evidence by
26 a court reporter. In accordance with its findings on the
27 evidence, the commission shall dismiss the charge or make
28 application to the supreme court to retire, discipline, or
29 remove the judicial officer or to discipline or remove an
30 employee of the judicial department.

31 Sec. 2. Section 602.2104, Code 1993, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 3. The commission has subpoena power,
34 which may be used in conducting investigations and during the
35 hearing process. A person who disobeys the commission's

1 subpoena or who refuses to testify or produce documents as
2 required by a commission subpoena may be punished for contempt
3 in the district court for the county in which the hearing is
4 being held or the investigation is being conducted. Costs
5 related to investigations and to the appearance of witnesses
6 subpoenaed by the designated prosecutor shall be paid by the
7 commission. Commission subpoenas may be issued as follows:

8 a. During an investigation, subpoenas shall be issued by
9 the commission, at the request of the person designated to
10 conduct the investigation, to compel the appearance of persons
11 or the production of documents before the person who is
12 designated to conduct the investigation. The person
13 designated to conduct the investigation shall administer the
14 required oath.

15 b. During the hearing process, subpoenas shall be issued
16 by the commission at the request of the designated prosecutor
17 or the judicial officer or employee of the judicial
18 department.

19 Sec. 3. Section 602.3106, subsection 1, Code 1993, is
20 amended to read as follows:

21 1. The supreme court shall set the fees ~~fee~~ for
22 ~~examination-and-fee~~ certification examinations. The fee for
23 ~~examination~~ shall be based on the annual cost of administering
24 ~~the examinations--The fee-for-certification-shall-be-based~~
25 and upon the administrative costs of sustaining the board,
26 which shall include but shall not be limited to the cost for
27 per diem, expenses, and travel for board members, and office
28 facilities, supplies, and equipment.

29 Sec. 4. Section 602.10125, Code 1993, is amended to read
30 as follows:

31 602.10125 ORDER FOR APPEARANCE -- NOTICE -- SERVICE.
32 If an action is commenced on the petition of an individual,
33 the court shall notify and refer the matter to the attorney
34 general. The attorney general, within thirty days of the
35 referral, shall submit a report to the court concerning the

1 appropriateness of bringing the action under this chapter.
2 The court shall not proceed with consideration of the merits
3 of the complaint until the report from the attorney general is
4 received. If the court deems the accusation sufficient to
5 justify further action, the court shall determine whether the
6 complaint is more appropriately pursued under this chapter
7 rather than the procedures established under supreme court
8 rule 118. If the court finds that proceeding under this
9 chapter is more appropriate, it shall cause an order to be
10 entered requiring the accused to appear and answer in the
11 court where the accusation has been filed on the day fixed in
12 the order, and shall cause a copy of the accusation and order
13 to be served upon the accused personally.

14 EXPLANATION

15 Sections 1 and 2 of this bill provide for the issuance of
16 both investigative and hearing subpoenas by the judicial
17 qualifications commission for purposes of conducting ethics
18 hearings and investigations on the conduct of judicial
19 officers.

20 Section 3 strikes references to separate fees for
21 examinations and certification of persons by the board of law
22 examiners. Language relating to a fee for certification of
23 persons by the board of law examiners is modified to state
24 that a fee is charged for the certification examination,
25 effectively combining the two fees previously provided for
26 into one fee.

27 Section 4 of the bill provides for referral for an initial
28 review by the attorney general of complaints against attorneys
29 that are commenced by private individuals, for a determination
30 of the appropriateness of bringing the action before a three-
31 judge panel. After a review or, if the complaint is initiated
32 by the court, after submission of a complaint by the court,
33 before the matter can be heard by a three-judge panel, the
34 court must determine whether the three-judge panel procedures
35 are more appropriate than the grievance procedures established

1 under supreme court rule 118.

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HOUSE FILE 301

S-3323

1 Amend House File 301, as passed by the House, as
2 follows:
3 1. Page 2, by inserting after line 28, the
4 following:
5 "Sec _____. Section 602.10123, Code 1993, is amended
6 to read as follows:
7 602.10123 PROCEEDINGS.
8 The proceedings to remove or suspend an attorney
9 may be commenced by the direction of the court or on
10 ~~motion~~ the petition of any individual. In the former
11 case, the court must direct some attorney to draw up
12 the accusation; in the latter, the accusation must be
13 drawn up and sworn to by the person making it."
14 2. By numbering and renumbering as necessary.
By AL STURGEON

S-3323 FILED MARCH 31, 1993

Adopted
4-6-93
(P. 1023)

Dinkla, Chair
Grundberg
Kreiman

SENATE/HOUSE FILE 301
BY (PROPOSED JUDICIAL DEPARTMENT
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to judicial ethics or grievance hearings and
2 examination and admissions subject to the administrative
3 authority of the supreme court.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 602.2104, subsection 2, Code 1993, is
2 amended to read as follows:

3 2. In case of a hearing before the commission, written
4 notice of the charge and of the time and place of hearing
5 shall be mailed to a judicial officer or an employee of the
6 judicial department at the person's residence at least twenty
7 days prior to the time set for hearing. Hearing shall be held
8 in the county where the judicial officer or employee of the
9 judicial department resides unless the commission and the
10 judicial officer or employee of the judicial department agree
11 to a different location. The judicial officer shall continue
12 to perform judicial duties during the pendency of the charge
13 and the employee shall continue to perform the employee's
14 assigned duties, unless otherwise ordered by the commission.
15 ~~The commission has subpoena power on behalf of the state and~~
16 ~~the judicial officer or employee of the judicial department.~~
17 ~~Disobedience of the commission's subpoena is punishable as~~
18 ~~contempt in the district court for the county in which the~~
19 ~~proceeding is held.~~ The attorney general shall prosecute the
20 charge before the commission on behalf of the state. A
21 judicial officer or employee of the judicial department may
22 defend and has the right to participate in person and by
23 counsel, to cross-examine, to be confronted by the witnesses,
24 and to present evidence in accordance with the rules of civil
25 procedure. A complete record shall be made of the evidence by
26 a court reporter. In accordance with its findings on the
27 evidence, the commission shall dismiss the charge or make
28 application to the supreme court to retire, discipline, or
29 remove the judicial officer or to discipline or remove an
30 employee of the judicial department.

31 Sec. 2. Section 602.2104, Code 1993, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 3. The commission has subpoena power,
34 which may be used in conducting investigations and during the
35 hearing process. A person who disobeys the commission's

1 subpoena or who refuses to testify or produce documents as
2 required by a commission subpoena may be punished for contempt
3 in the district court for the county in which the hearing is
4 being held or the investigation is being conducted. Costs
5 related to investigations and to the appearance of witnesses
6 subpoenaed by the designated prosecutor shall be paid by the
7 commission. Commission subpoenas may be issued as follows:

8 a. During an investigation, subpoenas shall be issued by
9 the commission, at the request of the person designated to
10 conduct the investigation, to compel the appearance of persons
11 or the production of documents before the person who is
12 designated to conduct the investigation. The person
13 designated to conduct the investigation shall administer the
14 required oath.

15 b. During the hearing process, subpoenas shall be issued
16 by the commission at the request of the designated prosecutor
17 or the judicial officer or employee of the judicial
18 department.

19 Sec. 3. Section 602.3106, subsection 1, Code 1993, is
20 amended to read as follows:

21 1. The supreme court shall set the fees fee for
22 ~~examination-and-for~~ certification examinations. The fee for
23 ~~examination~~ shall be based on the annual cost of administering
24 ~~the examinations---~~The fee for certification shall be based
25 and upon the administrative costs of sustaining the board,
26 which shall include but shall not be limited to the cost for
27 per diem, expenses, and travel for board members, and office
28 facilities, supplies, and equipment.

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30 as follows:

31 602.10125 ORDER FOR APPEARANCE -- NOTICE -- SERVICE.
32 If an action is commenced on motion of an individual, the
33 court shall notify and refer the matter to the attorney
34 general. The attorney general, within thirty days of the
35 referral, shall submit a report to the court concerning the

1 appropriateness of bringing the action under this chapter.
2 The court shall not proceed with consideration of the merits
3 of the complaint until the report from the attorney general is
4 received. If the court deems the accusation sufficient to
5 justify further action, the court shall determine whether the
6 complaint is more appropriately pursued under this chapter
7 rather than the procedures established under supreme court
8 rule 118, and whether a conflict of interest exists which
9 would prevent the complaint from receiving appropriate
10 consideration under the rule 118 procedures. If the court
11 finds that proceeding under this chapter is more appropriate
12 or that a conflict of interest exists that requires proceeding
13 under this chapter, it shall cause an order to be entered
14 requiring the accused to appear and answer in the court where
15 the accusation has been filed on the day fixed in the order,
16 and shall cause a copy of the accusation and order to be
17 served upon the accused personally.

18 EXPLANATION

19 Sections 1 and 2 of this bill provide for the issuance of
20 both investigative and hearing subpoenas by the judicial
21 qualifications commission for purposes of conducting ethics
22 hearings and investigations on the conduct of judicial
23 officers.

24 Section 3 strikes references to separate fees for
25 examinations and certification of persons by the board of law
26 examiners. Language relating to a fee for certification of
27 persons by the board of law examiners is modified to state
28 that a fee is charged for the certification examination,
29 effectively combining the two fees previously provided for
30 into one fee.

31 Section 4 of the bill provides for an initial review by the
32 attorney general of complaints against judges that are
33 commenced by private individuals, for a determination of the
34 appropriateness of bringing the action before a three-judge
35 panel. After a review or, if the complaint is initiated by

1 the court, after submission of a complaint by the court,
2 before the matter can be heard by a three-judge panel, the
3 court must determine whether the three-judge panel procedures
4 are more appropriate than the grievance procedures established
5 under supreme court rule 118 or whether a conflict of interest
6 exists that would prevent the matter from receiving fair
7 consideration under the procedures established under rule 118.

8 BACKGROUND STATEMENT

9 SUBMITTED BY THE AGENCY

10 Sections 1 and 2 of the bill expand the subpoena power of
11 the judicial qualifications commission. The commission is
12 responsible for investigating complaints of alleged ethics
13 violations by judges. Currently some of these investigations
14 are hampered because the commission does not have the power to
15 subpoena unless the investigation involves potential criminal
16 implications.

17 The intent of section 3 of the bill is to do all of the
18 following:

19 1. Eliminate separate fees, one for examination and one
20 for certification. Two separate fees create unnecessary
21 accounting problems especially with the new board rule which
22 grants reciprocity for R.P.R. status. The application fee
23 generates almost all of the income for the board.

24 2. Conform section 602.3106 with section 602.10108, which
25 provides for fees for examination and admission for the board
26 of law examiners. The language of the latter section is
27 similar to that of section 602.3106; however, there is only
28 one fee for the bar examination. A separate admission fee is
29 not set for collection.

30 Sections 602.10123 through 602.10136 set out a method of
31 revoking an attorney's license to practice law. This
32 procedure, which involves impaneling a three-judge court to
33 hear the case, is very expensive and inefficient. Within
34 recent years, several of these actions have been filed by
35 citizens. Once filed and certified, these actions are

1 difficult to deal with because of the logistics of convening a
2 three-judge panel and the attendant problems.

3 Section 4 of this bill would accomplish two things:

4 1. It would tighten the standards for certifying these
5 actions, eliminating these proceedings except in cases where
6 the reviewing judge finds either that there is some conflict
7 with the grievance process or that the complaint for some
8 reason is better handled by a three-judge panel.

9 2. It would formalize the current formal process of
10 referral to the attorney general for a report prior to the
11 certification. Because the attorney general has a statutory
12 duty to prosecute these actions, it is appropriate that the
13 attorney general has some input into the certification
14 process.

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HOUSE FILE 301

AN ACT

RELATING TO JUDICIAL ETHICS OR GRIEVANCE HEARINGS AND
EXAMINATION AND ADMISSIONS SUBJECT TO THE ADMINISTRATIVE
AUTHORITY OF THE SUPREME COURT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 602.2104, subsection 2, Code 1993, is amended to read as follows:

2. In case of a hearing before the commission, written notice of the charge and of the time and place of hearing shall be mailed to a judicial officer or an employee of the judicial department at the person's residence at least twenty days prior to the time set for hearing. Hearing shall be held in the county where the judicial officer or employee of the judicial department resides unless the commission and the judicial officer or employee of the judicial department agree to a different location. The judicial officer shall continue to perform judicial duties during the pendency of the charge and the employee shall continue to perform the employee's assigned duties, unless otherwise ordered by the commission. ~~The commission has subpoena power on behalf of the state and the judicial officer or employee of the judicial department. Disobedience of the commission's subpoena is punishable as contempt in the district court for the county in which the proceeding is held.~~ The attorney general shall prosecute the charge before the commission on behalf of the state. A judicial officer or employee of the judicial department may

defend and has the right to participate in person and by counsel, to cross-examine, to be confronted by the witnesses, and to present evidence in accordance with the rules of civil procedure. A complete record shall be made of the evidence by a court reporter. In accordance with its findings on the evidence, the commission shall dismiss the charge or make application to the supreme court to retire, discipline, or remove the judicial officer or to discipline or remove an employee of the judicial department.

Sec. 2. Section 602.2104, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The commission has subpoena power, which may be used in conducting investigations and during the hearing process. A person who disobeys the commission's subpoena or who refuses to testify or produce documents as required by a commission subpoena may be punished for contempt in the district court for the county in which the hearing is being held or the investigation is being conducted. Costs related to investigations and to the appearance of witnesses subpoenaed by the designated prosecutor shall be paid by the commission. Commission subpoenas may be issued as follows:

a. During an investigation, subpoenas shall be issued by the commission, at the request of the person designated to conduct the investigation, to compel the appearance of persons or the production of documents before the person who is designated to conduct the investigation. The person designated to conduct the investigation shall administer the required oath.

b. During the hearing process, subpoenas shall be issued by the commission at the request of the designated prosecutor or the judicial officer or employee of the judicial department.

Sec. 3. Section 602.3106, subsection 1, Code 1993, is amended to read as follows:

1. The supreme court shall set the fees fee for examination-and-for certification examinations. The fee for examination shall be based on the annual cost of administering the examinations; ~~--The fee for certification shall be based and~~ upon the administrative costs of sustaining the board, which shall include but shall not be limited to the cost for per diem, expenses, and travel for board members, and office facilities, supplies, and equipment.

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602.10123 PROCEEDINGS.

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Sec. 5. Section 602.10125, Code 1993, is amended to read as follows:

602.10125 ORDER FOR APPEARANCE -- NOTICE -- SERVICE.

If an action is commenced on the petition of an individual, the court shall notify and refer the matter to the attorney general. The attorney general, within thirty days of the referral, shall submit a report to the court concerning the appropriateness of bringing the action under this chapter. The court shall not proceed with consideration of the merits of the complaint until the report from the attorney general is received. If the court deems the accusation sufficient to justify further action, the court shall determine whether the complaint is more appropriately pursued under this chapter rather than the procedures established under supreme court rule 118. If the court finds that proceeding under this chapter is more appropriate, it shall cause an order to be entered requiring the accused to appear and answer in the court where the accusation has been filed on the day fixed in

the order, and shall cause a copy of the accusation and order to be served upon the accused personally.

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. ROSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 301, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 3, 1993

TERRY E. BRANSTAD
Governor