

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1346  
By: Ellis  
Jurisprudence  
4/8/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, Sections 33.01 through 33.04, Government Code, maintain several inconsistencies and incongruities regarding other provisions of Chapter 33, Government Code, and other law. C.S.S.B. 1346 would clarify Sections 33.01 through 33.04.

### **PURPOSE**

As proposed, C.S.S.B. 1346 clarifies certain provisions of the law regarding the State Commission on Judicial Conduct.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 33.001, Government Code, to define “censure,” “chairperson,” “clerk,” “examiner,” “formal hearing,” “formal proceedings,” “review tribunal,” “sanction,” and “special court of review.” Redefines “judge.” Makes conforming and nonsubstantive changes.

SECTION 2. Amends Section 33.002(a), Government Code, to make nonsubstantive changes.

SECTION 3. Amends Section 33.005, Government Code, to require a report to be distributed to the editor of the Texas Bar Journal, rather than cause the report to be printed in the Texas Bar Journal. Requires the Texas Bar Journal to publish the received report. Deletes text regarding proper and improper judicial conduct. Makes conforming changes.

SECTION 4. Amends Chapter 33C, Government Code, by adding Section 33.006, as follows:

Sec. 33.006. IMMUNITY FROM LIABILITY. Sets forth persons and agencies to whom this report applies. Provides that a person to whom this report applies is not liable for an act or omission committed by the person within the scope of the person’s official duties. Provides that the immunity from liability is absolute and unqualified and extends to any action in law or in equity.

SECTION 5. Amends Section 33.021, Government Code, to provide that the State Commission on Judicial Conduct (commission) may provide compensation to special masters. Deletes text regarding special masters.

SECTION 6. Amends Section 33.022, Government Code, as follows:

Sec. 33.022. New heading: INVESTIGATIONS AND FORMAL PROCEEDINGS. Authorizes the commission to conduct a preliminary investigation of the circumstances surrounding an allegation or appearance of misconduct or disability of a judge to determine if the allegation or appearance is unfounded or frivolous. Requires the commission to dismiss an investigation of an unfounded or frivolous claim. Provides that the commission shall conduct a full investigation and notify a judge if the claim is not unfounded or frivolous, and may request the judge to take certain action or order the deposition of a person other than the judge. Requires the commission to serve an order issued by the commission under Subsection (c)(2)(B) on the person who is the subject of the deposition and the judge who is the subject of the investigation. Requires

the order to be served within a reasonable time before the deposition. Authorizes the commission to file an application in a district court to enforce the order. Requires the commission to notify the judge of the deposition of the full investigation. Requires notice of the institution of formal proceedings to be served, rather than issued, on the judge. Requires the notice to specify the standards, rather than the statute, that the judge violated. Requires the person serving the notice to notify the clerk, rather than commission, when the notice was served. Provides that a judge is not entitled to a jury trial in certain proceedings. Deletes requirements regarding the conduct of an investigation by the commission. Deletes a provision authorizing a written notice to charge more than one violation. Deletes text regarding the conduct during an investigation and formal proceeding. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 33.023, Government Code, as follows:

Sec. 33.023. New heading: PHYSICAL AND MENTAL INCAPACITY OF JUDGE. Authorizes the commission to order a judge to submit to a physical or mental examination. Authorizes the commission to petition a district for an order compelling a judge to submit to the physical or mental examination, if the judge refuses to submit to a physical or mental examination.

SECTION 8. Amends Section 33.024, Government Code, to authorize a commission member, special master, or member of a special court of review in conducting a formal proceedings before a magistrate court of review, to administer oaths, order inspection of books and records, and issue certain subpoenas.

SECTION 9. Amends Section 33.025, Government Code, as follows:

Sec. 33.025. New heading: ENFORCEMENT OF SUBPOENA. Authorizes the commission to file an application in a district court or special court of review to enforce a subpoena. Authorizes a special master or special court of review to enforce a subpoena issued by certain persons. Deletes authority for certain persons to compel a person other than the judge to testify. Deletes requirements in an order compelling someone to testify. Deletes provisions regarding subpoena requirements and power of contempt.

SECTION 10. Amends Section 33.026, Government Code, as follows:

Sec. 33.026. New heading: WITNESS IMMUNITY. Authorizes a special master, a special court of review, the commission, or special court of review to compel certain persons to testify.

SECTION 11. Amends Section 33.027, Government Code, as follows:

Sec. 33.027. New heading: DISCOVERY. Requires discovery to be conducted in a practicable manner in certain proceedings. Requires a special master, the commission, or a special court of review to expedite discovery in certain proceedings. Sets forth discussions and identities that may not be the subject of a discovery. Deletes the authority for certain persons to order the deposition of a person in certain proceedings, and requirements for the order. Deletes the authority to make a petition regarding testimony, and other provisions regarding the petition. Deletes the authority to order a person to testify through the petition, and other provisions regarding testimony through the petition.

SECTION 12. Amends Section 33.028, Government Code, to authorize a peace officer, an employee of the commission, or any other person whom the commission, a special master, or a special court of review designates to serve process or execute an order. Deletes a provision making valid a process issued in an investigation or formal proceeding anywhere in the state. Deletes a requirement for a sheriff to serve a process on the request of certain persons.

SECTION 13. Amends Section 33.029, Government Code, to entitle a witness called to testify by the commission to certain reimbursements.

SECTION 14. Amends Section 33.030, Government Code, as follows:

Sec. 33.030. New heading: ASSISTANCE TO COMMISSION, SPECIAL MASTER, OR SPECIAL COURT OF REVIEW. Requires certain officials to cooperate with a special court of review concerned with the investigation, special master, or special court of review.

SECTION 15. Amends Section 33.031, Government Code, to authorize court costs or attorney's fees to be awarded in a proceeding. Deletes a prohibition against the commission, a special master, or a district court awarding certain court costs.

SECTION 16. Amends Section 33.032, Government Code, as follows:

Sec. 33.032. New heading: CONFIDENTIALITY OF PAPERS, RECORDS, AND PROCEEDINGS. Makes certain papers public on the convening of the formal hearing. Provides that the disciplinary record and sanction of a judge is admissible in certain proceedings. Authorizes the commission to release certain information regarding a complaint against a judge, based on a request by a judge. Makes conforming and nonsubstantive changes.

SECTION 17. Amends Section 33.033, Government Code, to authorize the commission to inform a complainant that a public sanction has been issued by the commission. Prohibits the commission from informing the complainant the name of a judge, unless a public sanction has been issued or formal proceedings have been instituted. Requires the notice to include a copy of the public sanction if a public sanction has been issued. Deletes a provision regarding judicial conduct in a complainant.

SECTION 18. Amends Sections 33.034(a), (d)-(f), and (h), Government Code, to provide that this section does not apply to a decision by the commission to institute formal, rather than removal, proceedings. Requires the commission to file with the clerk, rather than the petitioner and each justice on the court, a charging document that includes a copy of the sanction issued and any additional charges to be considered in the de novo proceedings. Makes the document public on its filing with the clerk, rather than the court. Requires the clerk to send the document to the judge who is the subject of the document and to each justice on the court of review. Makes any evidence during a hearing public information. Provides that the procedure for the review is governed to the extent practicable by rules of law and procedures that apply to the trial of civil actions generally. Requires the clerk, rather than the court, to perform certain tasks regarding the document. Authorizes the court to grant a continuance. Deletes a provision requiring the document to contain the commission's findings and other information. Deletes the authority for the commission to employ a special counsel to represent the commission at a hearing.

SECTION 19. Makes application of this Act prospective.

SECTION 20. Emergency clause.

Effective date: upon passage.

## **SUMMARY OF COMMITTEE CHANGES**

SECTION 7.

Amends Section 33.023(a), Government Code, to authorize the commission to order the judge to submit to a physical or mental examination, rather than a physical and mental examination.